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Parks, Forests, and Public Property

36

PART 200 TO END
Revised as of July 1, 1990

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Revised as of July 1, 1990

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Cite this Code: **CFR**

To cite the regulations in this volume use title, part and section number. Thus, 36 CFR 200.1 *refers to title 36, part 200, section 1.*

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16	as of January 1
Title 17 through Title 27	as of April 1
Title 28 through Title 41	as of July 1
Title 42 through Title 50	as of October 1

The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

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The Code of Federal Regulations is kept up to date by the individual issues of the Federal Register. These two publications must be used together to determine the latest version of any given rule.

To determine whether a Code volume has been amended since its revision date (in this case, July 1, 1990), consult the "List of CFR Sections Affected (LSA)," which is issued monthly, and the "Cumulative List of Parts Affected," which appears in the Reader Aids section of the daily Federal Register. These two lists will identify the Federal Register page number of the latest amendment of any given rule.

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Each volume of the Code contains amendments published in the Federal Register since the last revision of that volume of the Code. Source citations for the regulations are referred to by volume number and page number of the Federal Register and date of publication. Publication dates and effective dates are usually not the same and care must be exercised by the user in determining the actual effective date. In instances where the effective date is beyond the cut-off date for the Code a note has been inserted to reflect the future effective date. In those instances where a regulation published in the Federal Register states a date certain for expiration, an appropriate note will be inserted following the text.

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The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to display an OMB control number with their information collection request. Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

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Provisions that become obsolete before the revision date stated on the cover of each volume are not carried. Code users may find the text of provisions in effect on a given date in the past by using the appropriate numerical list of sections affected. For the period before January 1, 1973, consult either the List of CFR Sections Affected, 1949-1963, or 1964-1972, published in three separate volumes. For the period beginning January 1, 1973, a "List of CFR Sections Affected" is published at the end of each CFR volume.

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What is incorporation by reference? Incorporation by reference was established by statute and allows Federal agencies to meet the requirement to publish regulations in the Federal Register by referring to materials already published elsewhere. For an incorporation to be valid, the Director of the Federal Register must approve it. The legal effect of incorporation by reference is that the material is treated as if it were published in full in the Federal Register (5 U.S.C. 552(a)). This material, like any other properly issued regulation, has the force of law.

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(a) The incorporation will substantially reduce the volume of material published in the Federal Register.

(b) The matter incorporated is in fact available to the extent necessary to afford fairness and uniformity in the administrative process.

(c) The incorporating document is drafted and submitted for publication in accordance with 1 CFR Part 51.

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A subject index to the Code of Federal Regulations is contained in a separate volume, revised annually as of January 1, entitled CFR INDEX AND FINDING AIDS. This volume contains the Parallel Table of Statutory Authorities and Agency Rules (Table I), and Acts Requiring Publication in the Federal Register (Table

III). A list of CFR Titles, Chapters, and Parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

An index to the text of "Title 3—The President" is carried within that volume.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the "Contents" entries in the daily Federal Register.

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Martha L. Girard,
Director,
Office of the Federal Register.

July 2, 1990.

THIS TITLE

Title 36—PARKS, FORESTS, AND PUBLIC PROPERTY is composed of two volumes. The parts in these volumes are arranged in the following order: Parts 1 to 199 and Part 200 to End. The contents of these volumes represent all current regulations codified under this title of the CFR as of July 1, 1990.

Redesignation tables appear in the Finding Aids section of both volumes. Distribution and derivation tables appear in the Finding Aids section of this volume.

For this volume, Jacquelyn J. Demsky was Chief Editor. The Code of Federal Regulations publication program is under the direction of Richard L. Claypoole, assisted by Alomha S. Morris.

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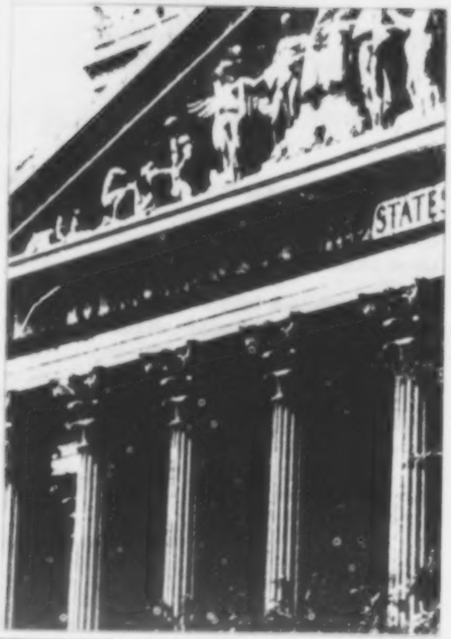

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(This book contains Part 200 to End)

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Cross References: Bureau of Land Management, Department of the Interior: See 43 CFR 2567.8; Group 2500.

Note: Other regulations relating to agriculture appear in Title 7; Title 9; Title 17, Chapter I; Title 48, Chapter 4.

Abbreviations: The following abbreviations are used in this chapter:
A.O. = *Administrative order* P.L.O. = *Public Land order*.

PART 200—ORGANIZATION, FUNCTIONS, AND PROCEDURES

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AUTHORITY: Sec. 552, 81 Stat. 54, 5 U.S.C. 552.

Subpart A—Organization

§ 200.1 Central organization.

(a) *Central office.* The national office of the Forest Service is in Washington, DC, in the South Agriculture Building. It consists of the Office of the Chief and Associate Chief, and a Deputy Chief for each of the following five activities: Programs and Legislation, National Forest System, Research, State and Private Forestry, and Administration. All communications should be addressed to the Forest Service, Department of Agriculture, P.O. Box 2417, Washington, DC 20013.

(b) *Chief of the Forest Service.* The Chief of the Forest Service, under the direction of the Secretary of Agriculture, administers the formulation, direction, and execution of Forest Service policies, programs, and activities.

(c) *Deputy Chiefs.* The major activities of the Forest Service at the headquarters level are divided into five Deputy Chief areas with each further divided into staff units. The programs and functions of staff units are directed by staff directors and may be subdivided into groups headed by group leaders. A description of the major activities of each Deputy Chief follows:

(1) *Programs and legislation.* Overall planning of Forest Service programs, policy formulation and analysis, budgeting, legislative development, reporting and liaison, and environmental coordination.

(2) *National Forest System.* Administration of National Forest System lands and management of natural resources within the principle of multiple use and sustained yield. Management includes planning, coordinating, and directing the national resource programs of timber, range, wildlife, recreation, watershed, and mineral areas; and support activities of fire, engineering, lands, aviation, and computer systems. The National Forest System includes:

154 Proclaimed or designated National Forests
19 National Grasslands
26 Purchase Units
17 Land Utilization Projects
24 Research and Experimental Areas
45 Other Areas

The first four classifications listed above are administered as 121 Forest Service Administrative Units, each headed by a Forest Supervisor. National Recreation Areas, National Forest Wildernesses, and Primitive Areas are included in the above land classifications.

(3) *Research.* Plan, coordinate, and direct research programs to learn how man can best use and protect the plant, animal, soil, water, and esthetic resources of nonagricultural rural and exurban lands for his well-being and enjoyment. These programs include research on timber management, forest products and engineering, forest economics and marketing, watersheds, wildlife and fish habitat, range, recreation and other environmental concerns, forest insects and disease, forest fire and atmospheric science. Plans and directs international forestry activities and disseminates forestry research information throughout the world.

(4) *State and private forestry.* Coordinate and provide leadership for intergovernmental resource programs for technical and financial assistance to improve and protect State and privately-owned forest resources and

urban and community forestry. Carries out this action through cooperative forestry, area planning and development, cooperative fire protection, forest insect and disease management, cooperative tree planting, and overall Forest Service participation in rural development and environmental concern, including civil defense and other emergency activities.

(5) *Administration*. Provide support for Forest Service programs through management improvement, fiscal and accounting, administrative services, personnel management, manpower and youth conservation, antipoverty programs, communication and electronics, internal review system, external audits, coordination of civil rights activities, public information, and Service-wide management of systems and computer applications.

[41 FR 24350, June 16, 1976, as amended at 42 FR 32230, June 24, 1977; 43 FR 27190, June 23, 1978; 44 FR 5660, Jan. 29, 1979]

§ 200.2 Field organization.

The field organization of the Forest Service consists of regions, stations, and areas as described below:

(a) *Regions of the National Forest System*. For the purpose of managing the lands administered by the Forest Service, the United States is divided into nine geographic regions of the National Forest System. Each region has a headquarters office and is supervised by a Regional Forester who is responsible to the Chief for the activities assigned to his region. Within each region are located national forests and other lands of the Forest Service.

(1) *National Forests*. Each Forest has a headquarters office and is supervised by a Forest Supervisor who is responsible to the Regional Forester. Two or more proclaimed or designated National Forests, or all of the Forests in a State, may be combined into one Forest Service Administrative Unit headed by one Forest Supervisor. Each Forest is divided into Ranger Districts. The Alaska Region is composed of two National Forests without Ranger Districts; with one Forest divided into three areas, each administered by a Forest Supervisor.

(2) *Ranger districts*. Each district may include a portion of a national forest, a national grassland or portion thereof, a national recreation area, a wilderness or primitive area, and other lands administered by the Forest Service. Each district has a headquarters office and is supervised by a District Ranger (or Area Ranger in some cases) who is responsible to the Forest Supervisor.

(b) *Experiment stations for forest and range research*. To facilitate forestry research in the field, the United States is divided into eight geographic regions referred to as experiment stations. Each station has a headquarters office and a Station Director who is responsible to the Chief for all research activities assigned to his station. The Forest Products Laboratory is an additional research organization headed by a Director. Each experiment station has research project locations and laboratories dispersed within the geographic boundaries of experiment stations.

(1) *Laboratories*. Research activities are in 85 locations, including 51 modern research laboratories.

(2) *Field facilities*. Within experiment stations there are 94 experimental forests and ranges and 131 research natural areas.

(c) *Areas for State and private forestry cooperation*. Field-level cooperation between the Forest Service, States, and the private sector on forestry activities is accomplished within two geographic areas in the Eastern United States, and within the national forest regions in the Western United States. Each of the two Eastern areas has a headquarters office and is supervised by an Area Director, who is responsible to the Chief for the activities assigned to his Area. Regional Foresters in Western Regions 1 through 6 and Region 10 are responsible for State and private forestry activities within their regions.

(d) *Field addresses*. The addresses of Regional Foresters, Station Directors, and Area Directors are given below. Under each Regional Office address is a list of National Forest Administrative Units by States with locations of Forest Supervisor headquarters. Headquarters locations for Ranger Districts, National Grasslands, and National Recreation Areas are not listed but may be obtained from Forest Supervisors or Regional Foresters.

NATIONAL FORESTS BY REGION

State in which forest is located	National forest administration unit	Headquarters location of forest supervisor
Region 1, Northern Region (Regional Forester, Federal Bldg., Missoula, MT 59801):		
Idaho	Clearwater	Orofino.
	Idaho Panhandle National Forests (Kaniksu-Coeur d'Alene-St. Joe	Coeur d'Alene.
	Nezperce	Grangeville.
Montana	Beaverhead	Dillon.
	Bitterroot	Hamilton.
	Custer	Billings.
	Deerlodge	Butte.
	Flathead	Kalispell.
	Gallatin	Bozeman.
	Helena	Helena.
	Kootenai	Libby.
	Lewis and Clark	Great Falls.
	Lolo	Missoula.
Region 2, Rocky Mountain Region (Regional Forester, 11177 West 8th St., Lakewood, CO 80225):		
Colorado	Arapaho-Roosevelt	Fort Collins.
	Grand Mesa-Uncompahgre and Gunnison	Delta.
	Pike-San Isabel	Pueblo.
	Rio Grande	Monte Vista.
	Routt	Steamboat Springs.
	San Juan	Durango.
	White River	Glenwood Springs.
Nebraska	Nebraska (Samuel R. McKelvie)	Chadron.
South Dakota	Black Hills	Custer.
Wyoming	Bighorn	Sheridan.
	Medicine Bow	Laramie.
	Shoshone	Cody.
Region 3, Southwestern Region (Regional Forester, Federal Bldg., 517 Gold Ave. SW., Albuquerque, NM 87102):		
Arizona	Apache-Sitgreaves	Springerville.
	Coconino	Flagstaff.
	Coronado	Tucson.
	Kaibab	Williams.
	Prescott	Prescott.
	Tonto	Phoenix.
New Mexico	Carson	Taos.
	Cibola	Albuquerque.
	Gila	Silver City.
	Lincoln	Alamogordo.
	Santa Fe	Santa Fe.
Region 4, Intermountain Region (Regional Forester, 324 25th St., Ogden, UT 84401):		
Idaho	Boise	Boise.
	Caribou (Cache-Idaho portion)	Pocatello.
	Challis	Challis.
	Payette	McCall.
	Salmon	Salmon.
	Sawtooth	Twin Falls.
	Targhee	St. Anthony.
Nevada	Humboldt	Elko.
	Toiyabe, except the Lake Tahoe basin management unit.	Reno.
Utah	Ashley	Vernal.
	Dixie	Cedar City.
	Fishlake	Richfield.
	Manti-La Sal	Price.
	Uinta	Provo.
	Wasatch (Cache-Utah portion)	Salt Lake City.
Wyoming	Bridger-Teton	Jackson.

NATIONAL FORESTS BY REGION—Continued

State in which forest is located	National forest administration unit	Headquarters location of forest supervisor
Region 5, Pacific Southwest Region (Regional Forester, 630 Sansome St., San Francisco, CA 94111):		
California	Angeles	Pasadena.
	Cleveland	San Diego.
	Eldorado, except the Lake Tahoe basin management unit.	Placerville.
	Inyo	Bishop.
	Klamath	Yreka.
	Lassen	Susanville.
	Los Padres	Goleta.
	Mendocino	Willows.
	Modoc	Alturas.
	Plumas	Quincy.
	San Bernardino	San Bernardino.
	Sequoia	Porterville.
	Shasta-Trinity	Redding.
	Sierra	Fresno.
	Six Rivers	Eureka.
	Stanislaus (Calaveras Bigtree)	Sonora.
	Tahoe, except the Lake Tahoe basin management unit.	Nevada City.
	Lake Tahoe basin management unit (portions of Toiyabe, Eldorado, and Tahoe National Forests).	South Lake Tahoe (headed by an administrator).
Region 6, Pacific Northwest Region (Regional Forester, 319 Southwest Pine St., P.O. Box 3623, Portland, OR 97208):		
Oregon	Deschutes	Bend.
	Fremont	Lakeview.
	Malheur	John Day.
	Mount Hood	Portland.
	Ochoco	Prineville.
	Rogue River	Medford.
	Siskiyou	Grants Pass.
	Siuslaw	Corvallis.
	Umatilla	Pendleton.
	Umpqua	Roseburg.
	Wallowa-Whitman	Baker.
	Willamette	Eugene.
	Winema	Klamath Falls.
Washington	Colville	Colville.
	Gifford Pinchot	Vancouver.
	Mount Baker-Snoqualmie	Seattle.
	Okanogan	Okanogan.
	Olympic	Olympia.
	Wenatchee	Wenatchee.
Region 8, Southern Region (Regional Forester, 1720 Peachtree Rd. NW., Atlanta, GA 30309):		
Alabama	National forests in Alabama (William B. Bankhead, Conecuh, Talladega, Tuskegee).	Montgomery.
Arkansas	Ouachita	Hot Springs.
	Ozark-St. Francis	Russellville.
Florida	National forests in Florida (Apalachicola, Ocala, Osceola).	Tallahassee.
Georgia	Chattahoochee-Oconee	Gainesville.
Kentucky	Daniel Boone	Winchester.
Louisiana	Kisatchie	Pineville.
Mississippi	National Forests in Mississippi (Bienville, Delta, De Soto, Holly Springs, Homochitto, Tombigbee).	Jackson.
North Carolina	National forests in North Carolina (Croatan, Nantahala, Pisgah, Uwharrie).	Asheville.
Puerto Rico	Caribbean	Rio Piedras, PR.
South Carolina	Francis Marion and Sumter	Columbia.
Tennessee	Cherokee	Cleveland.
Texas	National forests in Texas (Angelina, Davy Crockett, Sabine, Sam Houston).	Lufkin.
Virginia	George Washington	Harrisonburg.
	Jefferson	Roanoke.

NATIONAL FORESTS BY REGION—Continued

State in which forest is located	National forest administration unit	Headquarters location of forest supervisor
Region 9, Eastern Region (Regional Forester, 633 West Wisconsin Ave., Milwaukee, WI 53203):		
Illinois	Shawnee	Harrisburg.
Indiana and Ohio	Wayne-Hoosier	Bedford, IN.
Michigan	Hiawatha	Escanaba.
	Huron-Manistee	Cadillac.
	Ottawa	Ironwood.
Minnesota	Chippewa	Cass Lake.
	Superior	Duluth.
Missouri	Mark Twain	Rolla.
New Hampshire and Maine	White Mountain	Laconia, NH.
Pennsylvania	Allegheny	Warren.
Vermont	Green Mountain	Rutland.
West Virginia	Monongahela	Elkins.
Wisconsin	Chequamegon	Park Falls.
	Nicolet	Rhinelander.
Region 10, Alaska Region (Regional Forester, Federal Office Bldg., P.O. Box 1628, Juneau, AK 99802):		
Alaska	Chugach	Anchorage.
	Tongass:	
	Chatham area	Sitka.
	Ketchikan area	Ketchikan.
	Sitkine area	Petersburg.

FOREST AND RANGE EXPERIMENT STATIONS

NAME OF STATION AND HEADQUARTERS OF DIRECTOR

Intermountain—507 25th Street, Ogden, UT 84401
North Central—Folwell Avenue, St. Paul, MN 55108
Northeastern—370 Reed Road, Broomall, PA 19008
Pacific Northwest—809 N.E. Sixth Avenue, P.O. Box 3141, Portland, OR 97208
Pacific Southwest—1960 Addison Street, P.O. Box 245, Berkeley, CA 94701
Rocky Mountain—240 West Prospect Street, Fort Collins, CO 80521
Southeastern—Post Office Building, P.O. Box 2570, Asheville, NC 28802
Southern—T-10210 Postal Services Building, 701 Loyola Avenue, New Orleans, LA 70113
Forest Products Laboratory—Post Office Box 5130, North Walnut Street, Madison, WI 53705

STATE AND PRIVATE FORESTRY AREAS

Director, Northeastern Area—370 Reed Road, Broomall, PA 19008.
Director, Southeastern Area—1720 Peachtree Road N.W., Atlanta, GA 30309

NOTE: In Regions 1 through 6 and 10, State and private forestry activities are directed from Regional headquarters.

[41 FR 24350, June 16, 1976, as amended at 42 FR 32230, June 24, 1977; 42 FR 40438, Aug. 10, 1977; 43 FR 27190, June 23, 1978; 44 FR 5660, Jan. 29, 1979]

Subpart B—Functions and Procedures

§ 200.3 Forest Service functions.

(a) *Legislative authority.* The basic laws authorizing activities of the Forest Service are set forth in the United States Code in Title 7 (Agriculture), Chapters 14, 17, 33, 55, 59, and 61; Title 16 (Conservation), Chapters 2, 3, 4, 5C, 6, 23, 27, 28, 30, 36, and 37; Title 29 (Labor), Chapter 17; and Title 43 (Public Lands), Chapters 22 and 35.

(b) *Work of the Forest Service.* Under delegated authority from the Secretary of Agriculture, the broad responsibilities of the Forest Service are:

(1) *Leadership in forestry.* The Forest Service provides overall leadership in forest and forest-range conservation, development, and use. This involves determination of forestry conditions and requirements, and recommendations of policies and programs needed to keep the Nation's private and public lands fully productive.

(2) *National Forest System administration.* (i) The Forest Service administers and manages the National Forest System lands in accordance with the Multiple-Use Sustained-Yield Act of June 12, 1960 (16 U.S.C. 528-531); the Forest and Rangeland Renewable Resources Planning Act of

August 17, 1974 (16 U.S.C. 1600-1614); and the National Forest Management Act of October 22, 1976 (16 U.S.C. 472a, 476, 500, 513-516, 521b; 576b, 1600-1602, 1604, 1606, 1608-1614).

(ii) The National Forest System comprises about 188 million acres of land in the National Forests, National Grasslands, and other areas which have been transferred to the Forest Service for administration. On these public lands (A) forestry methods are applied in growing and harvesting timber, (B) forage is scientifically managed for the use of domestic livestock whose numbers are kept in balance with the carrying capacity of the range, (C) wildlife habitat and species are managed, (D) watersheds are managed to safeguard the water supply and stabilize streamflow, (E) recreation resources are managed for public enjoyment and benefit, (F) many forms of land and resource use are granted under permit or lease, and (G) physical and resource improvements needed to develop, protect, and use all resources are built and maintained.

(3) *Cooperative forestry.* The Forest Service carries out cooperative forestry programs for public benefit through programs initiated by State, county, and other Federal agencies in accordance with the Cooperative Forestry Assistance Act of July 1, 1978 (16 U.S.C. 2101-2111). These programs are directed at the protection, development, and sustained production of all forestry resources, both public and private.

(4) *Forest research.* The Forest Service conducts research on problems involving protection, development, management, renewal, and continuous use of all resources, products, values, and services of forest lands in accordance with the Forest and Rangeland Renewable Resources Research Act of June 30, 1978 (16 U.S.C. 1641-1647). Research is conducted on: (i) Forest and range management, including the five basic resources of timber, forest soil and water, range forage, wildlife and fish habitat, and forest recreation, (ii) forest protection from fire, insects, and disease, (iii) forest products and engineering, and (iv) forest resource economics including forest survey, forest economics, and forest products marketing.

[44 FR 37505, June 27, 1979]

§ 200.4 General procedures.

(a) The regulations of the Secretary of Agriculture governing the protection and administration of National Forest System lands are set forth in Chapter 2 Title 36, of the Code of Federal Regulations.

(b) Procedures for the conduct of Forest Service activities are issued as directives by the central office of the Forest Service and by the field offices listed in § 200.2.

(c) Directives include: (1) The Forest Service Directives System comprised of the Forest Service Manual and related Forest Service Handbooks, (2) correspondence that relates to decisions or interpretations on specific activities, cases, or incidents, and (3) circular memoranda that contain unpublished policies and procedures which apply to a number of subordinate offices.

(d) Forest Service Directives System issuances are published under delegated authority as follows:

(1) The Forest Service Manual and Forest Service Handbook issuances are published in the Office of the Chief by the Division of Administrative Management for use by all Forest Service units.

(2) Forest Service Manual and Forest Service Handbook issuances are supplemented in the field offices by the Regional Forester or Deputy Regional Forester, Research Station Director, Area Director, or Forest Supervisor or Deputy Forest Supervisors.

(e) Directives issued as unpublished correspondence or circular memoranda are issued in accordance with signing authorities published in the Forest Service Directives System.

(f) An alphabetical index of the contents of the Forest Service Manual and related Forest Service Handbooks is published as a Master Index Handbook. In addition, the Master Index contains a listing of all Series, Titles, and Chapters in the Forest Service Manual; and a listing of all Forest Service Handbooks in the Directives System.

(g) The Handbook on File System outlines and indexes the filing system for all correspondence, circular memoranda, and records.

(h) Forms used are listed in the Forest Service Manual Instructions for their use are issued as directives.

[32 FR 9679, July 4, 1967]

§ 200.5 Information available.

In accordance with 7 CFR 1.2, the Forest Service shall make available for public inspection and copying all published or unpublished directives, forms, records, and final opinions, including concurring or dissenting opinions and orders made in the adjudication of cases.

[40 FR 12790, Mar. 21, 1975]

§ 200.6 Indexes.

Publication of the indexes described in § 200.4 is deemed both unnecessary and impractical because of the large volume of material involved. However, copies of the indexes are available for public review in the Forest Service headquarters office in Washington, DC, and at field offices listed under § 200.2(d). The Forest Service will provide copies of any index upon request at a cost not to exceed the direct cost of duplication.

[40 FR 12790, Mar. 21, 1975]

§ 200.7 Offices where information is available.

Information which is to be made available for public inspection and copying by provisions of 5 U.S.C. 552(a)(2) (7 CFR 1.2) may be obtained at the Office of the Chief, or the office of any Regional Forester, Research Station Director, Area Director, Forest Supervisor, or District Ranger. The addresses of such offices are set forth in §§ 200.1 and 200.2. Forest Service personnel at these offices will also assist members of the public seeking any other Forest Service records. All information on all activities may not be available at a given office. When the information desired is not available at a given location, the office where the request is received will assist the applicant by directing him to another office where the information may be obtained. Except for such information as is generally available to the public, requests should be in writing and submitted in accordance with 7 CFR 1.3 and §§ 200.10 and 200.11 of this part.

[40 FR 12790, Mar. 21, 1975]

§ 200.8 Where information may be copied.

Facilities for copying are available at all offices listed in §§ 200.1 and 200.2 Copying facilities are not available at offices of the District Ranger.

[32 FR 9679, July 4, 1967]

§ 200.9 Rules governing inspection and copying.

(a) Facilities for inspection and copying are available during established office hours for the particular location, usually 8 a.m. to 5 p.m., Monday through Friday.

(b) The Department of Agriculture has established a schedule of fees for copies of information. The Forest Service charges for copies of records in accordance with the Department fee schedule.

(c) Applicants for information, at their discretion, may bring their own copy equipment and make copies of available information without charge.

(d) Informational material published for general public distribution is furnished without charge.

[32 FR 9679, July 4, 1967, as amended at 34 FR 17879, Nov. 5, 1969]

§ 200.10 Request for records.

The Regional Forester, Research Station Director, and Area Director at the field locations and addresses listed in § 200.2(d) and the Deputy Chief for the program area involved, located in Washington, DC, are authorized to receive requests for records submitted in accordance with 7 CFR 1.3(a), and to make determinations regarding whether to grant or deny requests for records exempt from mandatory disclosure under the provisions of 5 U.S.C. 552(b). All these officials are authorized to (a) extend the ten-day administrative deadline for reply pursuant to 7 CFR 1.8, (b) make discretionary releases pursuant to 7 CFR 1.11(b) of records exempt from mandatory disclosure, and (c) make determinations regarding the charging of fees.

[40 FR 12790, Mar. 21, 1975]

§ 200.11 Appeals.

(a) Appeals from denials of requests submitted under § 200.10 shall be submitted in accordance with 7 CFR 1.3(e) to the Chief, Forest Service, Department of Agriculture, 12th Street and Independence Avenue, SW., Washington, DC 20250.

(b) The Chief shall determine whether to grant or deny the appeal. He shall also make all necessary determinations relating to an extension of the twenty-day administrative deadline for reply pursuant to 7 CFR 1.8, discretionary release pursuant to 7 CFR 1.11(b) of records exempt from mandatory disclosure under 5 U.S.C. 552(b), and the charging of appropriate fees.

[40 FR 12790, Mar. 21, 1975]

PART 211—ADMINISTRATION

Subpart A—Cooperation With Private and State Agencies

Sec.

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211.18 Appeal of decisions of forest officers.

AUTHORITY: 30 Stat. 35, as amended, sec. 1, 33 Stat. 628 (16 U.S.C. 551, 472).

Subpart A—Cooperation With Private and State Agencies

§ 211.1 Cooperation with user organizations.

(a) Permittees who use a national forest or a portion thereof for like purposes and desire to cooperate with the Forest Service in the systematic betterment of conditions and facilities controlling their use of the national forest lands may do so by organizing (1) associations in which all permittees of like character within an area are eligible to membership, or (2) advisory boards without associations representing the permittees and requesting official recognition by the Forest Service. The request should be addressed to the Forest Supervisor who will act on all requests. To obtain recognition, an association must show that its membership includes a majority of all persons holding permits for like purposes in the area involved and that an advisory board has been elected whose agreements on behalf of the association shall be binding upon all members thereof. An advisory board without an association representing the permittees, to obtain recognition, must show that it represents a majority of all persons holding permits for like purposes in the area involved and that its agreements shall be binding upon all permittees that it represents. Upon recognition by the Forest Supervisor, the advisory board of an association or advisory board without an association representing the permittees shall be entitled to receive notice of proposed action and have an opportunity to be heard in reference to any proposed changes likely to affect materially the use or interest in the forest or a portion thereof enjoyed by the persons using the area.

(b) Upon receiving a request and recommendation from an advisory board representing an association or an advisory board without an association representing the permittees, the Forest Supervisor may establish special rules to prevent damage to the national forest lands, to regulate their use and occupancy, and to promote their development and improvement for the purposes and in the ways for which such permits are issued. Upon the establishment of special rules they will be made a part of the permits and shall be binding on the permittees.

(c) Upon receiving a request and recommendation of a majority of the members of an association or from a majority of the permittees of an area represented by an advisory board, the Forest Supervisor may authorize the operation by the association or advisory board, of services or utilities of general character and benefit which promote the protection and improvement of the forest lands by the permittees.

(d) A majority of the permittees of each national forest or the advisory board representing such permittees may either elect or appoint one of the permittees on such national forest as their representative on an advisory board representing a group of national forests. Upon such election or appointment, the regional forester will recognize the permittee so elected or appointed as a member of the advisory board representing a particular group of national forests.

[16 FR 5952, June 22, 1951]

§ 211.2 [Reserved]

§ 211.3 Cooperation with State officers.

All forest officers will cooperate with State officials, insofar as practicable, to enforce State fire, game, and health laws. They are authorized to accept appointments, without compensation, as deputy State fire wardens, game wardens, and/or health officers whenever in the judgment of the Chief of the Forest Service the performance of the duties required by these offices will not interfere with their duties as Federal forest officers.

[1 FR 1261, Aug. 15, 1936]

§ 211.4 Cooperation for fire prevention and control.

The Forest Service shall, whenever possible, and is hereby authorized to enter into such agreements with private owners of timber, with railroads, and with other industrial concerns operating in or near the national forests as will result in mutual benefit in the prevention and suppression of forest fires: *Provided*, That the service required of each party by such agreements shall be in proportion to the benefits conferred.

[1 FR 1261, Aug. 15, 1936]

§ 211.5 Emergency fire suppression assistance.

(a) *Definitions.* For the purpose of this subpart these definitions apply:

(1) Prescribed fire means a fire burning under a set of specified conditions which will accomplish certain planned resource management objectives.

(2) Escaped prescribed fire means a prescribed fire which has either exceeded the prescription or has rekindled after it has been declared to be out.

(b) In the absence of a written reciprocal agreement with any fire organization or in situations outside the scope of an agreement, the Forest Service is authorized to render emergency assistance in suppressing fires and in preserving life and property from the threat of fire within the vicinity of Forest Service fire protection facilities under the following conditions:

(1) If a prescribed fire initiated on lands administered by the Forest Service escapes onto lands not administered by the Forest Service, the Forest Service may commit personnel, materials, and equipment without reimbursement or consideration of the fire's continuing threat to National Forest System lands or resources.

(2) When requested, the Forest Service may commit personnel, materials, and equipment on a reimbursable basis on lands not administered by the Forest Service without regard to the fire's threat to National Forest System lands or resources.

[48 FR 44537, Sept. 29, 1983]

Subpart B—Appeal of Decisions Concerning the National Forest System

§ 211.16 Appeal of resource recovery and rehabilitation decisions resulting from natural catastrophes.

(a) *Purpose.* These rules provide an expedited and streamlined administrative appeal process for decisions arising from recovery and rehabilitation efforts on National Forest System lands and resources damaged in natural catastrophes.

(b) *Matters subject to appeal.* The procedures established in this section apply only to initial written decisions concerning resource removal, recovery, and rehabilitation activities resulting from natural catastrophes, such as forest fires, insect and disease epidemics, floods, winds, and earthquakes, that result from documentation required by the National Environmental Policy Act and its implementing regulations, policies, and procedures. Notice of the decisions appealable under this section and made after the effective date of this regulation shall be published in a local newspaper of general circulation immediately following the documentation referenced above. Subsequent implementing decisions, such as advertising timber salvage sales and/or awarding contracts, are not appealable under this section or 36 CFR 211.18.

(c) *Who may appeal.* The process set forth in this section is available to any individual or organization wishing to appeal a decision arising from resource removal, recovery, and rehabilitation activities resulting from natural catastrophe.

(d) *Who may comment.* Any person or organization interested in an appeal of a decision under this subpart may submit written comments to the Reviewing Officer for inclusion in the record.

(e) *Levels of appeal.* One level of administrative appeal is available.

(1) Appeals of decisions subject to the procedures of this section made by a District Ranger shall be filed with the Forest Supervisor.

(2) Appeals of decisions subject to the procedures of this section made by a Forest Supervisor shall be filed with the Regional Forester.

(f) *Filing procedures.* (1) To appeal a decision under this section, an appellant must file a written notice of appeal with the Reviewing Officer. If an appellant wishes to request a stay of implementation of the decision, the request must accompany the notice of appeal and be made in accordance with paragraph (i) of this section. The appellant must simultaneously provide a copy of the notice of appeal and any stay request to the Forest officer making the initial decision.

(2) All notices of appeal must be filed within 30 days of publication of the notice of decision.

(g) *Extensions of time.* There shall be no extension of the time periods specified in this section for either an appellant or the Forest Service.

(h) *Content of notice of appeal.* Parties appealing a decision under this section must include the following information in the written notice of appeal:

(1) The specific activity being appealed;

(2) The date notice of the decision was published;

(3) The Forest Officer who made the decision;

(4) How the appellant is affected by the decision; and

(5) The relief desired.

(i) *Stays.* (1) To request a stay, the appellant must:

(i) File a written request with the Reviewing Officer at the time the appeal is filed, simultaneously providing a copy to the Forest officer who made the initial decision in question.

(ii) Provide a written justification of the need for a stay, which includes a description of the specific activities to be stayed, and specific reasons why the stay should be granted, including:

(A) Harmful site-specific impacts or effects on resources in the area affected by the activity; and

(B) How the cited effects and impacts would prevent a meaningful decision on the merits.

(2) The Reviewing Officer shall rule on a stay request no later than 10 calendar days from receipt.

(i) If a stay is granted, the stay shall specify the activities to be stopped, duration of the stay, and reasons for granting the stay.

(ii) If a stay is denied in whole or in part, the decision shall specify the reasons for the denial.

(iii) A copy of the stay decision shall be sent to the appellant and the Forest Officer who made the initial decision.

(iv) A Reviewing Officer's decision on a stay is not subject to further appeal or review.

(j) *Review procedures.* (1) The Reviewing Officer shall determine if the notice of appeal has been timely filed. In the event of question, legible postmarks will be considered evidence of timely filing. Where postmarks are illegible, the Reviewing Officer shall rule on the timely receipt of the notice of appeal. If the appeal is untimely, the Reviewing Officer will immediately dismiss the appeal and notify the Forest Officer making the initial decision and the appellant.

(2) Upon receipt of a copy of the notice of appeal, the Forest Officer making the decision shall assemble the relevant decision documents and pertinent records and transmit them to the Reviewing Officer within 15 calendar days.

(3) In transmitting the decision documentation to the Reviewing Officer, the Forest Officer shall indicate how and specifically where the appellant's issues are addressed. Where time permits, the Forest Officer may also respond briefly to issues raised in the notice of appeal. A copy of the transmittal letter shall be provided to the appellant(s).

(4) The record on which the Reviewing Officer shall conduct a review consists of the notice of appeal, any other written comments received, the official documentation prepared by the Forest Officer making the initial decision, and any related correspondence, including additional information requested by the Reviewing Officer.

(5) The review record is available for public inspection.

(k) *Requests for additional information.* At any time during the appeal, the Reviewing Officer may request additional information from an appellant, the Forest Officer making the initial decision, or anyone who has submitted written comments. In addition, the Reviewing Officer may discuss issues related to the appeal with the Forest Officer making the initial decision, appellants, or affected parties.

(l) *Decision.* (1) The Reviewing Officer shall issue a final decision on the appeal, in writing, within 90 days of the Reviewing Officer's receipt of the notice of appeal, with a copy to anyone submitting comments.

(2) The Reviewing Officer's decision shall either affirm or reverse the original decision in whole or in part and include the reason(s) for the decision. The Reviewing Officer's decision may include instructions for further action by the Forest Officer making the initial decision.

(3) The Reviewing Officer's decision is the final administrative decision of the Department of Agriculture and that decision is not subject to further review under this section or any other appeal regulation.

(m) *Dismissal.* (1) A Reviewing Officer shall dismiss an appeal without decision on the merits when:

(i) The appeal is not received within the time specified in paragraph (f) of this section;

(ii) The requested relief cannot be granted under existing facts, law or regulation;

(iii) The notice of appeal does not meet the requirements of paragraph (h) of this section;

(iv) The appellant withdraws the appeal; or

(v) The Forest Officer making the initial decision withdraws that decision.

(2) A Reviewing Officer's decision to dismiss is not subject to further appeal or review.

(3) A Reviewing Officer shall give written notice of a dismissal to the appellant and Forest Officer whose initial decision or appeal decision is being appealed.

(n) *Continuance.* Provisions of 36 CFR 211.18 will remain in effect for appeals of decisions concerning activities that result from natural catastrophes filed prior to May 13, 1988.

(o) *Applicability and effective date.* The procedures of this section shall not apply to any appeal received after February 22, 1989.

[53 FR 17032, May 13, 1988, as amended at 54 FR 3357, Jan. 23, 1989]

§ 211.17 Appeal of decisions to reoffer returned or defaulted timber sales on National Forests.

(a) *Purpose.* These rules provide an expedited and streamlined administrative appeal process for decisions to reoffer sales of timber that were returned to the Government under the provisions of the Federal Timber Contract Modification Payment Act of 1984 (16 U.S.C. 618) or that were defaulted by the purchaser.

(b) *Matters subject to appeal.* The procedures established in this section apply only to decisions to reoffer timber sales resulting from returned or defaulted timber sale contracts. Implementing decisions, such as advertising and/or awarding a reoffered sale, made subsequent to the initial decision to reoffer a returned or defaulted sale are not appealable under this section or 36 CFR 211.18.

(c) *Notice requirements.* (1) Notice of decisions appealable under this section and made after April 22, 1988, shall be published in a local newspaper of general circulation and also shall be provided in writing to parties to written instruments issued by the Forest Service who are known to be affected by the decision, as well as to any other interested persons or organizations who have requested notification of the specific decision.

(2) If the sale that is the subject of an appeal has been bid upon or awarded, the Reviewing Officer shall immediately notify the apparent high bidder or sale awardee of the appeal and the opportunity to comment as provided for in paragraph (f) of this section.

(d) *Who may appeal.* The process set forth in this section is available to:

(1) Any individual or organization who, following publication of the interim rule at 36 CFR 211.17 on January 28, 1988, submitted a timely Notice of Appeal on a decision to reoffer a sale of returned or defaulted timber.

(2) Any other individual or organization wishing to appeal a decision made prior to January 28, 1988, to reoffer a sale of returned or defaulted timber.

(3) Except as provided in paragraph (e) of this section, any individual or organization may appeal a decision made after January 28, 1988, to reoffer timber resulting from returned or defaulted timber sales.

(e) *Who may not appeal.* The process set forth in this section is not available to the defaulting purchaser of the original timber sale that is being or has been reoffered.

(f) *Who may comment.* Any person or organization interested in an appeal of a decision under this subpart may submit written comments to the Reviewing Officer for inclusion in the record.

(g) *Levels of appeal.* For decisions to reoffer timber sales made after October 30, 1986, one level of administrative appeal is available. For decisions to reoffer timber sales made prior to October 30, 1986, two levels of administrative appeal are available; the second level being to the next higher administrative level.

(1) Appeals of decisions to reoffer timber sales made by a District Ranger shall be filed with the Forest Supervisor.

(2) Appeals of decisions to reoffer timber sales made by a Forest Supervisor shall be filed with the Regional Forester.

(h) *Filing procedures.* To appeal a decision under this section, an appellant must file a written notice of appeal with the Reviewing Officer. If an appellant wishes to request a stay of implementation of the decision, the request must accompany the notice of appeal and be made in accordance with paragraph (j) of this section. The appellant must simultaneously provide a copy of the notice of appeal and any stay request to the Forest officer making the initial decision to reoffer.

(1) For appeals filed pursuant to paragraph (d)(1) of this section, the notice of appeal must have been submitted by February 29, 1988.

(2) All notices of appeal pursuant to paragraph (d)(2) of this section must be submitted by May 23, 1988.

(3) All notices of appeal pursuant to paragraph (d)(3) of this section must be filed within 30 days of publication of the notice of decision, or from the date of the written decision for those parties pursuant to paragraph (c)(1) of this section entitled to receive written decision.

(i) *Extensions of time.* There shall be no extension of the time periods specified in this section for either an appellant or the Forest Service.

(j) *Content of notice of appeal.* Parties appealing a decision to reoffer a sale must include the following information in the written notice of appeal:

(1) The timber sale being appealed;

(2) Either the decision date or the date notice of the decision was published;

(3) The Forest Officer who made the decision;

(4) How the appellant is affected by the decision;

(5) The relief desired; and

(6) A description of environmentally significant modifications or changed circumstances which are alleged to have occurred between when the initial timber sale was offered and sold and the date of the appeal on the decision to reoffer the sale.

(k) *Second level appeals.* For appeals to the second level filed pursuant to paragraph (g) of this section, a notice of appeal must be filed with the next higher administrative level within 15 days from the date of the first level Reviewing Officer's appeal decision. If the first level Reviewing Officer is the Forest Supervisor, the appeal is to the Regional Forester. If the first level Reviewing Officer is the Regional Forester, the appeal is to the Chief. The notice need only include the documents submitted at the previous level, the first level decision letter, and a statement addressing why the appellant believes the Reviewing Officer's decision is erroneous. A copy of that statement must be provided to the first level Reviewing Officer also. The first level Reviewing Officer may provide a response to the notice of appeal to the second level Reviewing Officer; and must send a copy to the appellant. The review will be based on the existing record from the first level appeal, the second level notice of appeal, and any response by the first level Reviewing Officer. A decision shall be issued within 45 days after receiving the notice of appeal.

(l) *Stays.* (1) To request a stay, the appellant must:

(i) File a written request with the Reviewing Officer at the time the appeal is filed, simultaneously providing a copy to the Forest officer who made the initial decision to reoffer the timber sale in question.

(ii) Provide a written justification of the need for a stay, which includes a description of the specific activities to be stayed, and specific reasons why the stay should be granted, including:

(A) Harmful site-specific impacts or effects on resources in the area affected by the reoffered timber sale; and

(B) How the cited effects and impacts would prevent a meaningful decision on the merits.

(2) The Reviewing Officer shall rule on a stay request no later than 10 calendar days from receipt.

(i) If a stay is granted, the stay shall specify the activities to be stopped, duration of the stay, and reasons for granting the stay.

(ii) If a stay is denied in whole or in part, the decision shall specify the reasons for the denial.

(iii) A copy of the decision shall be sent to the appellant and the Forest Officer who made the initial decision to reoffer.

(iv) A Reviewing Officer's decision on a stay is not subject to further appeal or review.

(m) *Review procedures.* (1) The Reviewing Officer shall determine if the notice of appeal has been timely filed. In the event of question, legible postmarks will be considered evidence of timely filing. Where postmarks are illegible, the Reviewing Officer shall rule on the timely receipt of the notice of appeal. If the appeal is untimely, the Reviewing Officer will immediately dismiss the appeal and notify the Forest officer making the initial decision and the appellant.

(2) Upon receipt of a copy of the notice of appeal, the Forest Officer making the decision to reoffer a sale shall assemble the relevant decision documents and pertinent records and transmit them to the Reviewing Officer within 15 calendar days.

(3) In transmitting the decision documentation to the Reviewing Officer, the Forest Officer shall indicate how and specifically where the appellant's issues are addressed. Where time permits, the Forest Officer may also respond briefly to issues raised in the notice of appeal. A copy of the transmittal letter shall be provided to the appellant(s).

(4) The record on which the Reviewing Officer shall conduct a review consists of the notice of appeal, any other written comments received, the offi-

cial documentation prepared by the Forest Officer making the initial decision to reoffer, and any related correspondence, including additional information requested by the Reviewing Officer.

(5) The review record is open to public inspection.

(n) *Requests for additional information.* At any time during the review, the Reviewing Officer may request additional information from an appellant, the Forest officer making the initial decision to reoffer, or anyone who has submitted written comments. In addition, the Reviewing Officer may discuss issues related to the appeal with the Forest officer making the initial decision to reoffer, appellants, or those receiving notice pursuant to paragraph (c) of this section, as needed to clarify information submitted or to seek resolution of the issues in question.

(o) *Decision.* (1) The Reviewing Officer shall issue a final decision on the appeal, in writing, within 90 days of the Reviewing Officer's receipt of the notice of appeal, with a copy to any person submitting comments.

(2) The Reviewing Officer's decision shall either affirm or reverse the original decision in whole or in part and include the reason(s) for the decision. The Reviewing Officer's decision may include instructions for further action by the Forest Officer making the initial decision.

(3) The Reviewing Officer's decision is the final administrative decision of the Department of Agriculture and that decision is not subject to further review under this section or any other appeal regulation, except for appeals to the second level filed pursuant to paragraph (g) of this section.

(p) *Dismissal.* (1) A Reviewing Officer shall dismiss an appeal without decision on the merits when:

(i) The appeal is not received within the time specified in paragraph (h) of this section;

(ii) The requested relief cannot be granted under existing facts, law or regulation;

(iii) The notice of appeal does not meet the requirements of paragraph (j) or (k) of this section;

(iv) The appellant withdaws the appeal; or

(v) The Forest Officer making the initial decision to reoffer a sale withdraws that decision.

(2) An appeal may be dismissed in whole or in part if an appellant challenges a Decision Notice or Record of Decision without referring to (i) changed circumstances or (ii) environmentally significant modifications which are alleged to have occurred after the initial timber sale was offered and the decision made to sell the timber.

(3) A Reviewing Officer's decision to dismiss is not subject to further appeal or review.

(4) A Reviewing Officer shall give written notice of dismissal to the appellant and Forest Officer whose initial decision or appeal decision is being appealed.

[53 FR 13265, Apr. 22, 1988; 53 FR 40730, Oct. 18, 1988]

§ 211.18 Appeal of decisions of forest officers.

(a) *Matters subject to appeal.* (1) Decisions of Forest Officers concerning the National Forest System and not excluded in paragraph (b) of this section are subject to appeal.

(2) Written notice of a decision shall be provided to the party or parties to a written instrument issued by the Forest Service and affected by the decision, and to any other interested person who has requested in writing notification of the specific decision.

(3) For other persons, notification of a decision may be provided through publication in a newspaper of general circulation.

(b) *Matters excluded from appeal under this section.* (1) Decisions appealable to the Agriculture Board of Contract Appeals, USDA, under 7 CFR Part 24.

(2) Decisions involving Freedom of Information Act denials under 7 CFR Part 1 or Privacy Act determinations under 7 CFR 1.118.

(3) Decisions in which the jurisdiction of another Government agency, the Comptroller General, or a court supersedes that of the Department of Agriculture, or decisions to provide ad-

visory, non-binding recommendations to other agencies which have the final authority to implement the recommendations in question.

(4) Decisions appealable under separate administrative proceedings, including, but not limited to, those under 36 CFR 228.14 (Minerals); 36 CFR 292.15(l) (Appeals, Sawtooth National Recreation Area, Private Lands); 36 CFR 223.117 (Administration of Cooperative or Federal Sustained Yield Units); 7 CFR 21.104 (Eligibility for Relocation Payment or Amount); and 4 CFR Part 21 (Bid Protests).

(5) Decisions pursuant to OMB Circular A-76.

(6) Decisions concerning contracts under the Federal Property and Administrative Services Act of 1949, as amended.

(7) Decisions covered by the Contract Disputes Act.

(8) Decisions involving personnel matters.

(9) Decisions where relief sought is reformation of a contract or award of monetary damages.

(10) Procedural decisions made under this subpart, except those involving stays and dismissals.

(11) Preliminary planning process decisions made prior to completion of final plans and guides prepared pursuant to 36 CFR Part 219 and 40 CFR Parts 1500-1508.

(12) Decisions resulting from review of previous decisions to terminate a recreation residence permit.

(13) Decisions to reoffer timber from returned or defaulted timber sales appealable under § 211.17.

(14) Subsequent actions to advertise and/or award a reoffered sale.

(15) Initial decisions arising from recovery and rehabilitation activities resulting from natural catastrophes appealable under § 211.16 of this subpart and subsequent implementing decisions, such as advertising timber salvage sales and/or awarding contracts made pursuant to such decisions.

(c) *Filing procedures and timeliness.* (1) A notice of appeal of any initial decision must be filed with the Forest Officer who made the decision, known as the Deciding Officer, within 45 days of the date of the decision. A statement of reasons to support the appeal, and any request for an oral presentation must also be filed within the 45-day period for filing a notice of appeal unless an extension is granted.

(2) A notice of appeal at the second level must be filed within 30 days of written decision. A statement of reasons to support the appeal and any request for an oral presentation must accompany any notice of appeal at the second level.

(3) The period to appeal a decision made according to 40 CFR 1505.2 shall not end prior to the 30-day period provided for in 40 CFR 1506.10.

(4) When determining time of filing, Reviewing Officers shall give precedence to United States Postal Service (USPS) postmarks over other evidence of timely filing. Filing is defined as either mailing or delivery of the appropriate documents. If documents are delivered by means other than the USPS, date of receipt determines time of filing. If the date of mailing cannot be determined from a legible USPS postmark, the Reviewing Officer may accept other evidence of timely filing. Weekends or Federal holidays are included in computing the time allowed for filing, but when the filing time would expire on a weekend or holiday, the filing time is extended to the end of the next business day.

(5) Questions on timeliness will be decided by the Reviewing Officer.

(6) Decisions may be implemented unless a stay is granted.

(d) *Extensions.* (1) Time for filing notice of appeal may not be extended.

(2) Written requests for extensions to request an oral presentation, to prepare a statement of reasons, to provide comments on the responsive statement, and to submit comments following an oral presentation may be granted by the Reviewing Officer for good cause shown by the Applicant. A decision will be made within 10 days of receipt and written notification will be provided.

(e) *Notice of appeal content.* The notice must specifically identify the decision being appealed, the decision date, the Forest Officer who made the decision, how the Appellant is affected by the decision, and the relief desired.

(f) *Levels of appeal.* (1) The available levels of appeal are in sequence according to the National Forest System line officer relationship. A decision made within delegated authority by any officer who serves as staff to a line officer listed below is considered a decision made by the line officer. A procedural decision cannot be appealed to a level higher than that available for the initial substantive decision from which the procedural matter arises.

(i) Initial decisions of a District Ranger may be appealed to the Forest Supervisor, with second level appeal to the Regional Forester.

(ii) Initial decisions of a Forest Supervisor may be appealed to the Regional Forester, with second level appeal to the Chief.

(iii) Initial decisions of a Regional Forester may be appealed to the Chief.

(iv) Initial decisions of the Chief may be appealed to the Secretary of Agriculture.

(2) Appeal decisions made by the Chief will be sent to the Secretary within one business day: The Secretary may exercise discretion to review such decisions, but will accept a notice of appeal or petition only for initial decisions made by the Chief.

(3) A notice of appeal of any initial decision made by the Chief shall, within 5 days of its receipt by the Chief, be sent along with the relevant decision to the Secretary for review at the Secretary's discretion. The appeal is deemed denied if the Secretary takes no action within 10 days of receiving the appeal.

(4) Appeal decisions made by the Chief may be implemented if the Secretary, within 10 days of receipt, does not exercise discretionary review.

(5) If the Secretary elects to review a decision made by the Chief, the review may be conducted based on the record before the Chief, or under other procedures the Secretary may deem appropriate, including the preparation of a responsive statement.

(6) Decisions at the final level of review constitute the final administrative determination of the Department of Agriculture.

(g) *Responsive statement.* At each level of appeal except for decisions of the Chief, the Deciding Officer will, within 30 days of receiving a statement of reasons, prepare a responsive statement and send it to the parties to the appeal. The responsive statement will respond to Appellant's reasons, and by specific reference may incorporate documents submitted by parties to the appeal. Appellants may, within 20 days from the mailing date of the responsive statement, provide a concise reply. Upon receipt of such reply, or at the end of the 20-day period, whichever comes first, the appeal record will be sent to the Reviewing Officer.

(h) *Stay of decision pending appeal.* (1) An appellant or intervenor may request a stay of decision at any time while an appeal is pending.

(2) When a request to intervene is accompanied by a stay request, the Reviewing Officer shall first decide whether to grant intervention. The 21-day period for ruling on the stay request begins on the date intervention is granted. The Reviewing Officer will not rule on the stay request if intervention is denied.

(3) In making a request for stay of decision, an appellant or intervenor must:

(i) File the request for stay and accompanying documents with the Reviewing Officer and simultaneously provide a copy to the Deciding Officer.

(ii) Enclose a copy of the Notice of Appeal or request for intervention, unless already submitted and acknowledged.

(iii) As part of the request, provide a written description of the specific project(s), activity(ies), or other action(s) to be stopped. The request must state the specific reason(s) why the stay should be granted in detail sufficient to permit the Reviewing Officer to evaluate and rule upon the stay request. Requesters' description shall include: (A) Specific effect(s) upon the requester in site-specific terms of the project(s), activity(ies), or other action(s) to be stopped; (B) impacts or affects to resources in the area affected by the project(s), activity(ies), or action(s) to be stopped; and (C) how the effects in paragraph (h)(3)(iii) (A) and (B) of this section would prevent a meaningful appeal on the merits while the appeal decision is pending.

(4) The Reviewing Officer may rule on a stay request or petition to change or lift a stay at any time, but, must rule no later than 21 calendar days from receipt.

(i) If a stay is granted, the stay shall specify: Specific activities to be stopped; duration of the stay; and reasons for granting the stay. A stay shall remain in effect for 10 days after a decision on the merits, unless a different period is specified in the stay decision document, or a Reviewing Officer changes a stay decision pursuant to paragraph (h)(7) of this section.

(ii) If a stay is denied, in whole or in part, the decision document shall specify the reasons for the denial and any subsequent appeal rights.

(5) In deciding a stay request, a Reviewing Officer shall consider the following:

(i) Information provided by the requester pursuant to paragraph (h)(3)(iii) of this section including the validity of any claims of injury to the requester or the public interest.

(ii) The effect a stay decision would have on the preservation of a meaningful appeal on the merits.

(iii) Any other factors the Reviewing Officer may consider relevant.

(6) Deciding Officers may provide Reviewing Officers with a response to stay requests. A copy of any response provided shall be sent to all parties to the appeal.

(7) A Reviewing Officer may change a stay decision, according to any terms established in the stay decision itself, or at any time during pendancy of an appeal that circumstances support a change of the stay.

(i) A Reviewing Officer may change a stay decision upon petition by any party to the appeal (including the Deciding Officer) at any time that circumstances support such action. A decision not to change a stay decision is not appealable.

(ii) In making any change to a stay decision, the Reviewing Officer must consider the criteria outlined in paragraph (h)(5) of this section.

(iii) Petitions to change an existing stay decision must contain an explanation of how circumstances have changed.

(8) Levels of appeal for any decision on a stay request or change thereof are those specified in paragraphs (f), (l), and (o) of this section. Appellants may choose to file a procedural appeal of a stay decision pursuant to paragraph (o)(4) of this section or to request a change in a stay decision pursuant to paragraph (h)(7) of this section, but may not elect to pursue both options. In appeals with multiple parties (appellants and/or intervenors), once any party invokes a procedural appeal of a stay decision or a request to change a stay decision, whichever occurs first, all other parties shall be bound by that action and cannot then pursue the alternate course of action.

(9) The provisions of paragraphs (h)(1) through (h)(8) of this section apply to all appeals pending on July 20, 1987.

(i) *Dismissal.* (1) An Appellant may withdraw an appeal at any time by notifying the Deciding Officer and other parties to the appeal in writing.

(2) A Reviewing Officer may dismiss an appeal when:

(i) Appellant has failed to submit a timely statement of reasons and the notice of appeal provides an insufficient basis upon which to base a decision.

(ii) Relief desired by the Appellant cannot be granted under existing facts or laws.

(3) Dismissals are appealable, if a level is available as set forth in paragraph (f) of this section.

(j) *Scope of appeal.* Throughout all levels of appeal, an Appellant and any Intervenor shall be confined to the issues originally raised in the appeal. New information on the original issues may be introduced at any level.

(k) *Provision for comments.* Any person or organization may submit written comments for the record. Such comments will be considered as provided for in paragraph (p) of this section.

(l) *Intervenors.* (1) At the discretion of the Reviewing Officer, any person or organization having an immediate interest in the subject of an appeal may intervene by submitting written information at any level of the appeal process. Such intervention shall not act to elevate the appeal to levels higher than available to the original Appellant.

(2) In appeals involving Intervenors, the Reviewing Officer may prescribe special procedures to expedite the process. The parties to the appeal will be notified of these procedures.

(3) Appellants and Intervenors must concurrently furnish copies of all submissions to each other; otherwise, such submissions may be removed from the appeal record. At the discretion of the Reviewing Officer, Appellants may be given time to review and comment on initial submissions by intervenors and vice versa.

(4) Appellants or Intervenors appealing a decision to a higher level must furnish copies of their notice of appeal to all other named parties to the appeal.

(m) *Oral presentation.* Within the appeal time limits established herein, parties to an appeal may ask to give an oral presentation. The Reviewing Officer will respond in writing to the request no later than 10 days after receiving the appeal record. If the request is granted, the Reviewing Officer will advise the parties of who will hear the presentation, and of the place, time, and date. Participants may provide documentary material at the presentation and, within 10 days after the presentation, may also submit a brief summary of their remarks.

(n) *Consolidation of appeals.* Multiple appeals of the same decision, or of similar decisions involving common issues, facts, or law, may be consolidated by the Reviewing Officer who may then issue one appeal decision. At the discretion of the Reviewing Officer, the Deciding Officer may prepare one responsive statement to multiple appeals.

(o) *Procedural matters.* (1) Decisions on stays and dismissals are the only appealable procedural decisions. Such appeals must be filed with the Deciding Officer within 30 days of the procedural decision. A statement of the Appellant's reasons must be included.

(2) Within 10 days of receipt, the Deciding Officer shall send appeals on stays and dismissals and a response to the Reviewing Officer for decision.

(3) Decisions on procedural matters will be made by the Reviewing Officer within 10 days of receipt and all parties will be notified of the decision in writing.

(4) Appeal of decisions on procedural matters cannot exceed the highest level available for the initial substantive decision appealed.

(p) *Appeal record.* The record consists of a distinct set of identifiable documents directly concerning the appeal, including, but not limited to, notices of appeal, comments, statements of reasons, responsive statements, procedural determinations, correspondence, summaries of oral presentations and related documents, appeal decisions, and other information the Reviewing Officer may consider necessary to reach a decision. For a period not to exceed 10 days following the date the record is received by the Reviewing Officer or from the date of the oral presentation, whichever is the later date, parties may submit additional information to the Reviewing Officer for the record. They must concurrently send copies to all other parties who may within 20 days of the date they receive such material, provide a concise response to the Reviewing Officer. Upon receipt of such response, the record will be closed. The record is open for public inspection.

(q) *Request for additional information or remand for further action.* If the appeal record is considered inadequate to affirm or reverse a decision, the Reviewing Officer may suspend the appeal process and request additional information, or remand the case with instructions for further action.

(r) *Appeal decision.* An appeal decision will be based only on the record and should be made within 30 days of the date the record is closed. The Appellant will be notified if more time is needed.

(s) *Continuance of appeals.* Provisions of 36 CFR 211.19 will remain in effect for appeals initially filed between June 28, 1977, and the effective date of 36 CFR 211.18. The procedures of this section shall not apply to any decision of a forest officer made after February 21, 1989.

[48 FR 13425, Mar. 31, 1983, as amended at 49 FR 26591, June 28, 1984; 51 FR 19831, June 3, 1986; 51 FR 41785, Nov. 19, 1986; 52 FR 23178, June 18, 1987; 52 FR 27547, July 22, 1987; 53 FR 2493, Jan. 28, 1988; 53 FR 17033, May 13, 1988; 54 FR 3357, Jan. 23, 1989; 54 FR 6892, Feb. 15, 1989]

PART 212—ADMINISTRATION OF THE FOREST DEVELOPMENT TRANSPORTATION SYSTEM

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AUTHORITY: Sec. 1, 30 Stat. 35, as amended sec. 205, 72 Stat. 907; 16 U.S.C. 551, 23 U.S.C. 205.

§ 212.1 Definitions.

For the purpose of this part the following terms, respectively, shall mean:

(a) *Chief.* The Chief, Forest Service, Department of Agriculture.

(b) *Regional forester.* A regional forester of the Forest Service.

(c) *Forest development transportation plan.* The plan for the system of access roads, trails, and airfields needed for the protection, administration, and utilization of the National Forests and other lands administered by the Forest Service, or the development and use of resources upon which communities within or adjacent to the National Forests are dependent.

(d) *Forest development transportation facility.* An access road, trail, or airfield wholly or partly within or adjacent to and serving a National Forest and other lands administered by the Forest Service which has been included in the forest development transportation plan.

(e) *Forest development road and trail funds.* Funds authorized or appropriated for the purpose of carrying out the provisions of section 205 of the Act of August 27, 1958 (72 Stat. 907), as amended; 23 U.S.C. 205.

(f) *Road and trail 10 percent funds.* Funds available from the permanent appropriation "Roads and Trails for States" under the Act of March 4, 1913 (37 Stat. 843), as amended; 16 U.S.C. 501.

(g) *Federal airport funds.* Discretionary funds available for airfields in National Forests under section 6(b)(3) of the Act of May 13, 1946 (60 Stat. 173), as amended; 49 U.S.C. 1105(b)(3).

(h) *Construction.* The supervising, inspecting, actual building, and all expense incidental to the construction or reconstruction of a forest development transportation facility, including locating, surveying, and mapping (including the establishment of temporary and permanent geodetic markers in accordance with the specifications of the Coast and Geodetic Survey in the Department of Commerce), costs of rights-of-way, and elimination of hazards.

(i) *Maintenance.* The upkeep of the entire forest development transportation facility including surface and shoulders, parking and side areas, structures, and such traffic-control devices as are necessary for its safe and efficient utilization.

(j) *Preconstruction engineering.* All work and expense of preparing for construction or reconstruction of a forest development transportation facility including: (1) Engineering and economic investigations, studies, and reports; (2) reconnaissance surveys; (3) preliminary surveys; (4) preliminary location surveys; (5) soils, foundations, and materials investigations, surveys, and tests; (6) preliminary and final designs; (7) preliminary and final plans, drawings, specifications, and estimates of quantities and cost; (8) final location surveys staked on the ground; and (9) rights-of-way surveys, plans, and descriptions.

(k) *Construction engineering.* All work and expense of setting out, controlling, inspecting, and measuring the construction or reconstruction of a forest development transportation facility including: (1) Construction surveys to establish line and grade for the work, to control the work, and to measure quantities; (2) redesigning, adjusting, and changing the plans, specifications, and materials to meet conditions; (3) inspecting, directing, and controlling operations for compliance with plans and specifications; (4) inspecting, testing, and accepting materials and equipment to be installed in the work; and (5) inspecting, measuring, and accepting completed work.

(25 Stat. 357, 26 Stat. 1103, 30 Stat. 35-36, 1233, 38 Stat. 430, 46 Stat. 1421 64 Stat. 82, 72 Stat. 885, as amended, 74 Stat. 215, 78 Stat. 1089; 16 U.S.C. 471, 478, 498, 525, 528, 531, 532, 538, 551, 572, 23 U.S.C. 101, 205, 40 U.S.C. 257, 258a, et seq., 42 Atty. Gen. Op. No. 7, Comp. Gen. B-65972, May 19, 1947; 40 Comp. Gen. 372; 41 Comp. Gen. 1; 41 Comp. Gen. 576, and 42 Comp. Gen. 590)

[30 FR 5476, Apr. 16, 1965]

§ 212.2 Allocation.

Funds for forest development transportation facilities shall be allocated according to relative needs in the various National Forests and other lands administered by the Forest Service, taking into consideration the existing transportation facilities, value of timber or other resources served, relative fire danger, and comparative difficulties of construction.

(25 Stat. 357, 26 Stat. 1103, 30 Stat. 35-36, 1233, 38 Stat. 430, 46 Stat. 1421 64 Stat. 82, 72 Stat. 885, as amended, 74 Stat. 215, 78 Stat. 1089; 16 U.S.C. 471, 478, 498, 525, 528-531, 532, 538, 551, 572, 23 U.S.C. 101, 205, 40 U.S.C. 257, 258a et seq.; 42 Atty. Gen. Op. No. 7; Comp Gen. B-65972, May 19, 1947; 40 Comp. Gen. 372; 41 Comp. Gen. 1; 41 Comp. Gen. 576, and 42 Comp. Gen. 590)

[30 FR 5476, Apr. 16, 1965]

§ 212.3 Forest development transportation plan.

A plan shall be made for each National Forest, experimental, and other areas under Forest Service administration. It shall be prepared, maintained, revised, and reported on in accordance with procedures prescribed by the Chief.

(25 Stat. 357, 26 Stat. 1103, 30 Stat. 35-36, 1233, 38 Stat. 430, 46 Stat. 1421, 64 Stat. 82, 72 Stat. 885, as amended, 74 Stat. 215, 78 Stat. 1089; 16 U.S.C. 471, 478, 498, 525, 528-531, 532, 538, 551, 572, 23 U.S.C. 101, 205, 40 U.S.C. 257, 258a et seq.; 42 Atty. Gen. Op. No. 7; Comp. Gen. B-65972, May 19, 1947; 40 Comp. Gen. 372; 41 Comp. Gen. 1; 41 Comp. Gen. 576, and 42 Comp. Gen. 590)

[30 FR 5476, Apr. 16, 1965]

§ 212.4 Program of work.

A program shall be made for all of the work to be done on the forest development transportation system each fiscal year. It shall be prepared, modified, and reported on in accordance with procedures prescribed by the Chief.

[24 FR 10256, Dec. 18, 1959]

§ 212.5 Cooperative work.

(a) Cooperative agreements for all projects which involve financial contributions from cooperators shall be negotiated, approved, and executed in accordance with procedures prescribed by the Chief.

(b) Cooperative funds contributed in advance shall be deposited in the United States Treasury to the credit of the Forest Service Cooperative Fund authorized by the Act of June 30, 1914 (38 Stat. 430), as amended; 16 U.S.C. 498, or the Act of March 3, 1925 (43 Stat. 1132), as amended; 16 U.S.C. 572, which deposits will be made available for expenditure from the appropriation "Cooperative Work, Forest Service." If a State, county or other governmental agency is unable to contribute funds under the Act of March 3, 1925, as amended, in advance but is able to pay its share subsequent to performance of the work, the subsequent payment of such funds will be deposited to the credit of the Forest Service appropriation from which the expenditures were made or to appropriations for similar purposes currently available at the time of deposit.

[25 FR 6360, July 7, 1960]

§ 212.6 Construction and maintenance.

(a) Construction and maintenance work on forest development transportation facilities with appropriated funds shall be directed to what is necessary and economically justified for protection, administration, development, and multiple-use management of the federally owned lands and resources served.

(b) Preliminary engineering and the construction and maintenance of forest development transportation facilities shall be performed by force account or let to contract, unless otherwise approved by the Chief. The contract method shall be employed for roads and trails in accordance with section 205(c) of the Act of August 27, 1958 (72 Stat. 907); 23 U.S.C. 205, and for all other facilities when it is advantageous and in the interest of the Government.

(c) No construction work shall be started by force account or let to contract until all necessary rights of way have been secured, and approved by the Attorney General, if required, and cooperative agreements, if any, approved and executed.

[24 FR 10256, Dec. 18, 1959, as amended at 25 FR 6360, July 7, 1960]

§ 212.7 Road system management.

(a) *Traffic rules.* Rules set forth under 36 CFR Part 261 and this section shall apply to all forest development roads under the jurisdiction of the Forest Service except when in conflict with written agreement.

(1) *General.* Traffic on roads is subject to State traffic laws where applicable except when in conflict with the rules established under 36 CFR Part 261.

(2) *Specific.* The following specific traffic rules shall apply unless different rules are established in 36 CFR Part 261.

(i) The load, weight, length, height, and width limitations of vehicles shall be in accordance with the laws of the States wherein the road is located. Greater or lesser limits may be imposed and these greater or lesser limits shall be established as provided in 36 CFR Part 261.

(ii) Roads, or segments thereof, may be restricted to use by certain classes of vehicles or types of traffic as provided in 36 CFR Part 261. Classes of vehicles are defined to include, but not be limited to, distinguishable groupings such as passenger cars, buses, trucks, motorcycles, automobiles, 4-wheel drive vehicles and tailers. Types of traffic are defined to include, but not be limited to, groupings such as commercial hauling, recreation and administrative.

(iii) Roads, or segments thereof, may be closed to all vehicle use as provided in 36 CFR Part 261.

(iv) Additional rules may be imposed as provided in 36 CFR Part 261.

(b) [Reserved]

(c) *Cost recovery on forest service roads.* The Chief may determine that a share of the cost of acquisition, construction, reconstruction, improvement, or maintenance of a road, or segment thereof, used or to be used for commercial hauling of non-Federal forests products and other non-Federal products, commodities and materials, should be borne by the owners or haulers thereof. The Chief may condition the permission to use a road, or segment thereof, upon payment to the United States of the proportionate share of the cost and bearing proportionate maintenance as determined to be attributable to the owner's or hauler's use in accordance with § 212.11. This condition to use roads would apply where the owners or haulers: (1) Have not shared in the cost of acquisition, construction, reconstruction, or improvements, and (2) have not made contributions to pay their proportionate share of the costs.

(d) *Maintenance and reconstruction of forest service roads by users*—(1) *Maintenance.* The Chief may require, but not in conflict with an existing permit, easement, contract, or other agreement, the user or users of a road, including purchasers of Government timber and other products, to maintain the roads in a satisfactory condition commensurate with the particular use requirements of each. The maintenance to be borne by each user shall be proportionate to total use and no individual user shall be required to perform or bear the costs of maintenance other than that commensurate with his use.

(2) *Reconstruction.* The Chief may require, but not in conflict with an existing permit, easement, contract, or other agreement, the user or users of a road to reconstruct it when, at the

time the use is requested, reconstruction is determined to be necessary to accommodate his use.

(3) *Deposits in lieu of performance.* If the maintenance or reconstruction cannot be so provided or if the Chief determines that maintenance or reconstruction by a user would not be practical, the Chief may require that sufficient funds be deposited by the user to provide his portion of the total maintenance or reconstruction costs. Deposits made to cover maintenance or reconstruction of roads shall be used for the purposes deposited, except that: (i) Deposits received for work on adjacent and overlapping areas may be combined when it is the most practicable and efficient manner of performing the work, and cost thereof may be determined by estimates, and (ii) unexpended balances upon accomplishment of the purposes for which deposited shall be transferred to miscellaneous receipts or refunded.

(e) *Deposits for making delayed payments to cooperator.* Any fees or other collections received by the Chief under the terms of an agreement or other document providing for delayed payments to the Government's cooperator for use of a road shall be placed in a fund available for making these payments.

[39 FR 27649, July 31, 1974, as amended at 42 FR 2957, Jan. 14, 1977; 43 FR 20007, May 10, 1978]

§ 212.8 Ingress and egress.

(a) *Policy in acquiring and granting access.* To assure effective protection, management, and utilization of lands administered by the Forest Service and intermingled and adjacent private and public lands, and for the use and development of the resources upon which communities within or adjacent to the National Forests are dependent, the Chief shall as promptly as is feasible obtain needed access thereto and shall grant appropriate access across National Forest and other lands and easements administered by the Forest Service to intermingled or adjacent landowners. Construction, reconstruction or maintenance of a road or highway requires written authorization.

(b) *Actual settlers and other persons residing within the National Forests and other areas administered by the Forest Service.* Actual settlers and other persons residing within the National Forests and other areas administered by the Forest Service shall be permitted ingress and egress over the same and use of existing forest development roads and trails in order to reach their homes and to utilize their property: Provided, such ingress and egress or use shall conform to rules and regulations governing the protection and administration of the lands and the roads or trails to be used.

(c) *Others.* Entering upon the National Forests and other lands administered by the Forest Service and use of existing forest development roads and trails shall be permitted for all proper and lawful purposes subject to compliance with rules and regulations governing the lands and the roads or trails to be used.

(25 Stat. 357, 26 Stat. 1103, 30 Stat. 35-36, 1233 38 Stat. 430, 46 Stat. 1421, 64 Stat. 82, 72 Stat. 885; as amended, 74 Stat. 215, 78 Stat. 1089; 16 U.S.C. 471, 478, 498, 525, 528-531, 532, 538, 551, 572, 23 U.S.C. 101, 205, 40 U.S.C. 257, 258a et seq.; 42 Atty. Gen. Op. No. 7; Comp. Gen. B-65972, May 19, 1947; 40 Comp. Gen. 372; 41 Comp. Gen. 1; 41 Comp. Gen. 576, and 42 Comp. Gen. 590)

[40 FR 52611, Nov. 11, 1975, as amended at 42 FR 2957, Jan. 14, 1977]

§ 212.9 Access procurement by the United States.

(a) *Existing or proposed forest development roads which are or will be parts of a system of a State, county, or other local subdivision.* Forest development roads which are or will be parts of a road system of a State, county, or other local subdivision and are on rights-of-way held in the name of the State, county, or other local subdivision may be constructed, reconstructed, improved or maintained by the Forest Service when there is an appropriate agreement with the State, county, or other local subdivision under authority of 23 U.S.C. 205: *Provided,* Such construction, reconstruction, improvement, or maintenance is essential to provide safe and economical access to the National Forests and other lands administered by the Forest Service.

(b) *Acquisition of easements and rights of use.* Except as otherwise provided in the regulations of this part, easements for road and trail construction across non-Federal lands and easements or rights of use over non-Federal roads and trails will be acquired in the name of the United States of America and its assigns. The easements or rights of use may be acquired by purchase, condemnation, donation, or as a reciprocal for permits or easements for roads or trails to be constructed or for easements over or permits to use existing roads or trails.

(c) *Methods of compensation for easements and rights of use acquired by the United States.* Compensation in negotiated acquisitions may be: (1) By payment from appropriated funds; (2) pursuant to reservation in the grant of easement to the United States whereby the grantor reserves the right to require haulers of Federal timber or other Federal products over the road conveyed or thereafter constructed by the grantor to make payments to the grantor in accordance with the terms of the reservation; (3) by granting reciprocal rights; or (4) by a combination of these methods.

(d) *Cooperative construction and use agreements.* Where areas, partly lands administered by the Forest Service and partly private or other ownership are undeveloped or inadequately developed by roads, the Chief will, to the extent feasible and advantageous to the United States, join in planning, constructing, reconstructing, improving, maintaining, and using an adequate road system on the basis of each party bearing the proportion of the cost attributable to the anticipated benefits as set forth in § 212.11.

(e) *Condemnation.* Where access across non-Federal land or over a non-Federal road or trail cannot be obtained through negotiations with reasonable promptness, condemnation will be undertaken.

(f) *Access over non-Federal land and use of non-Federal roads or trails on a temporary basis.* The Chief may negotiate a temporary agreement for access over non-Federal land and for use of an existing non-Federal road or trail where there is immediate need for temporary access for limited purposes that can be economically met by such procedure, or where the foreseeable need does not justify the expenditures necessary to provide a permanent road or trail.

(g) *Use and control of interests in roads, trails, and easements acquired by the United States.* Interests in roads, trails, and easements acquired by the United States shall be under the control of the United States, subject to approved reservations, limitations and other provisions set forth in the easement, permit, or other indenture. This control by the United States may include restricting or conditioning the use of the interest owned by the United States in the road, trail, or easement where necessary.

(25 Stat. 357, 26 Stat. 1103, 30 Stat. 35-36, 1233, 38 Stat. 430, 46 Stat. 1421, 64 Stat. 82, 72 Stat. 885, as amended, 74 Stat. 215, 78 Stat. 1089; 16 U.S.C. 471, 478, 498, 525, 528-531, 532, 551, 572, 23 U.S.C. 101, 205, 40 U.S.C. 257, 258a et seq.; 42 Atty. Gen. Op. No. 7; Comp. Gen. B-65972, May 19, 1947; 40 Comp. Gen. 372; 41 Comp. Gen. 1; 41 Comp. Gen. 576, and 42 Comp. Gen. 590)

[30 FR 5476, Apr. 16, 1965, as amended at 39 FR 27650, July 31, 1974]

§ 212.10 Permission to cross lands and easements owned by the United States and administered by the Forest Service.

(a) *Permission to construct or use roads across lands and assignable easements owned by the United States and administered by the Forest Service.* If a reciprocal benefit is needed by the United States, permission to construct or use a road across lands and across assignable easements owned by the United States and administered by the Forest Service will be conditioned, except as provided in this section, for any applicant who seeks a permit to construct or use a road across the same, upon the grant to the United States of a reciprocal benefit. Such benefit shall bear: (1) A reasonable relation to the management of lands administered by the Forest Service; and (2) a value substantially similar to the value of the estate or interest in lands or easements applied for. In those instances where the values of the interests needed by the United States exceed those applied for by the applicant, the additional interests required by the United States will be acquired as provided in § 212.9 (b) and (c). Where values needed by the applicant exceed those needed by the United States, the difference in values will be determined under principles set forth below and in §§ 212.7(c) and 212.11. If a reciprocal benefit is not needed by the United States, or the applicant shows good cause why the reciprocal benefit needed by the United States cannot or should not be granted by him, or the applicant declines to grant the reciprocal benefit requested by the United States or if a bona fide emergency exists, permission to construct or use a road across lands owned by the United States may be conditioned for any applicant upon reasonable charges and all other terms and conditions required by the Chief to protect the interests of the United States. Permits for such road construction or use will be non-exclusive and will be conditioned upon compliance with their terms and conditions and with the rules and regulations governing the protection and administration of the lands and those applicable to such roads.

(b) [Reserved]

(c) *Replacement of prior grants.* (1) Upon application to the Chief, an easement under the Act of March 3, 1899 (30 Stat. 1233, 16 U.S.C. 525), shall be replaced by an easement under paragraph (d) of this section.

(2) Upon application to the Chief, an easement shall be granted under paragraph (d) of this section as a replacement for any stipulations for ingress and egress issued under the Act of June 4, 1897 or permit or other document evidencing the applicant's right to use a road: *Provided,* The applicant has met the requirements for obtaining such easement as set forth in paragraph (d) of this section.

(d) *Easements for roads crossing lands or easements administered by the Forest Service.* (1) Applications for permanent or temporary easements for specified periods or otherwise to be granted under the Act of October 13, 1964 (78 Stat. 1039, 16 U.S.C. 533), over lands or easements administered by the Forest Service, or over roads thereon will be approved by the Chief for those applicants who have conveyed or provided appropriate easements over roads, assignable easements and lands owned or controlled by them to the United States of America and its assigns and who have already constructed, or will, as scheduled by agreement, construct their proportionate share of the road or road system of which the segments described in the application are parts. The Chief, after approval of the application and the grant of the easement, will cause the same to be entered in the records of the Forest Service, and delivered to the applicant.

(2) Notwithstanding paragraph (d)(1) of this section, the Chief may grant to the applicant a permanent or temporary easement for specified periods or otherwise upon such exchange of easements or share-cost arrangement or other reasonable consideration as he may deem appropriate.

(3) The Chief may grant to a State or local subdivision thereof; easements for roads over lands or easements administered by the Forest Service and over roads thereon, when the roads thereon or roads to be constructed thereon will serve said lands and are, or will become a part of the road system maintained by such State or local subdivision for general public use: *Provided,* That easements shall not be granted under authority of this act (78 Stat. 1089), 16 U.S.C. 533 which may be granted under the Highway Act (72 Stat. 916, 23 U.S.C. 317), as amended. The easements shall contain such provisions, terms, and conditions as the Chief may determine are necessary to retain and protect the interests needed by the United States.

(4) All instruments affecting permanent interests in land executed pursuant to this paragraph (d) of this section shall be recorded in each county where the lands are located. Copies of all instruments affecting interests in lands reserved from public domain shall be furnished by the Chief to the Secretary of the Interior.

(5) The Chief may terminate any easement granted under the provisions of the Act of October 13, 1964 (78 Stat. 1089, 16 U.S.C. 534), (i) by consent of the owner of the easement, (ii) by condemnation, or (iii) upon abandonment after nonuse by the owner of the ease-

ment for a period of 5 years. Before any easement is terminated for nonuse or abandonment, the owner of the easement must be given notice and, upon his request made within 60 days after receipt of the notice, a hearing in accordance with the provisions of 36 CFR Part 211, Subpart B.

(25 Stat. 357, 26 Stat. 1103, 30 Stat. 35-36, 1233, 38 Stat. 430, 46 Stat. 1421, 64 Stat. 82, 72 Stat. 885, as amended, 74 Stat. 215, 78 Stat. 1089; 16 U.S.C. 471, 478, 498, 525, 528-531, 532, 538, 551, 572, 23 U.S.C. 101, 205, 40 U.S.C. 257, 258a et seq.; 42 Atty. Gen. Op. No. 7; Comp. Gen. B-65972, May 19, 1947; 40 Comp. Gen. 372; 41 Comp. Gen. 1; 41 Comp. Gen. 576, and 42 Comp. Gen. 590)

[30 FR 5476, Apr. 16, 1965, as amended at 39 FR 27650, July 31, 1974; 48 FR 28638, June 23, 1983]

§ 212.11 Principles for sharing use of roads.

The use of roads under arrangements for sharing costs or performance shall be in accordance with the following:

(a) *Road improvement.* Use of a road for commercial hauling, except occasional or minor amounts, will be conditioned upon improvement or supplemental construction of the road to safety and economically serve the contemplated use, unless the Chief determines that the safety and economy of the established and foreseeable use by the United States, its users and cooperators will not be impaired by the use for which application is being made. With the consent of the Chief the applicant may deposit funds in the estimated amount required for the improvements or supplemental construction in lieu of performance. Such funds will be used by the Forest Service to do the planned work. The cost of the improvements or supplemental construction will be taken into account in determining any otherwise required contribution to cover the proportionate share of the cost of road acquisition, construction, reconstruction or improvement attributable to the use.

(b) *Corresponding benefits.* Corresponding benefits which may be accepted by the Chief for sharing road use will be those which bear a reasonable relation to the management of lands administered by the Forest Service. They may be in the form of: (1) Deposit of funds with the Forest Service for use in paying the cost of road construction, reconstruction, or improvement to be borne by the user; (2) the grant of a reciprocal right of substantially similar value to the road use sought; (3) construction, reconstruction, or improvement by applicant of a road needed for access to and use of lands administered by the Forest Service; or (4) any combination of these.

(c) *Cost determinations for roads cooperatively constructed under agreements.* When roads are constructed under cooperative agreements to meet mutual needs of the United States and others for access, determinations of the shares of costs to be borne by the United States and the cooperating parties will include consideration of: (1) The standard of road required for the planned hauling; (2) the share of planned use; (3) the location and volume of tributary timber owned by each party and expected to be hauled over the road or roads; (4) the tributary areas owned or controlled by each party; (5) expected use by the public; and (6) other appropriate considerations.

(d) *Cost recovery by the United States from others.* When roads are used under permit for commercial hauling instead of under cooperative agreement, any cost to be recovered by the United States will be calculated in proportion to the planned use of the road. The road cost used in such calculation will be the amount or estimated amount expended in the acquisition, construction, reconstruction, and improvement of that capacity of the road required to serve the use needs of all parties that are or reasonably can be expected to use the road. The road costs shall not exceed the replacement value of the road. Such road share-cost payments will be through deposits in advance of use unless the user provides a payment bond satisfactory to the Chief guaranteeing that payments will be made promptly upon billing by the Forest Service.

(e) *Cost sharing with a cooperator.* The costs to achieve the agreed upon road or road system may be met by: (1) Use of appropriated funds; (2) construction, reconstruction, or improvement of roads or segments of roads by purchasers of products from lands administered by the Forest Service or other users; (3) use of deposits made by cooperator with the Forest Service to cover cooperator's agreed share; (4) agreement with cooperator pursuant to which cooperator does more than his agreed share of constructing, reconstructing, or improving a road and recovers costs incurred in excess of his agreed share by charging purchasers of products from lands administered by the Forest Service an equitable amount within the limits and to the total amount specified in the agreement; or (5) a combination of the aforementioned methods.

(f) *Road maintenance and resurfacing.* Cooperators will share the road maintenance and resurfacing costs under suitable agreements to perform, arrange for performance by others, or by making deposits with the Forest Service which will be used to pay the cost of work necessary to keep such roads in satisfactory condition commensurate with use requirements of each cooperator. No cooperator shall be required to perform or bear such costs other than those occasioned by its individual use. Other users will bear costs in accordance with § 212.7(d).

(g) *Interests to be acquired by the United States in roads or easements therefor.* Where the United States is to bear or share the cost of constructing or improving, or acquiring a road system, a road, or a segment thereof, or acquires an easement therefor, the interest acquired will: (1) Be for perpetual use unless the road use falls within the limited classes where temporary roads or roads for limited periods are acceptable; (2) provide adequately for foreseeable management, protection, and utilization needs of lands administered by the Forest Service and intermingled and adjacent private and public lands and for the use and development of the resources upon which communities within or adjacent to the National Forest are dependent; and (3) not be subject to conditions, reservations, or convenants unrelated to the road use, or which seek or might tend to direct or limit policies and procedures for management of lands administered by the Forest Service.

(25 Stat. 357, 26 Stat. 1103, 30 Stat. 35-36, 1233, 38 Stat. 430, 46 Stat. 1421, 64 Stat. 82, 72 Stat. 885, as amended, 74 Stat. 215, 78 Stat. 1089; 16 U.S.C. 471, 478, 498, 525, 528-531, 532, 538, 551, 572, 23 U.S.C. 101, 205, 40 U.S.C. 257, 258a et seq.; 42 Atty. Gen. Op. No. 7; Comp. Gen. B-65972, May 19, 1947; 40 Comp. Gen. 372; 41 Comp. Gen. 1; 41 Comp. Gen. 576, and 42 Comp. Gen. 590)

[30 FR 5478, Apr. 16, 1965, as amended at 39 FR 27650, July 31, 1974]

§ 212.12 Maximum economy forest development roads.

The Chief may acquire, construct, reconstruct, improve, and maintain forest development roads within and near the National Forests and other lands administered by the Forest Service in locations and according to specifications which will permit maximum economy in harvesting timber from such lands tributary to such roads and at the same time meet the requirements for protection, development, and management thereof and for utilization of the other resources thereof. Financing of such roads may be accomplished (a) by the Chief utilizing appropriated funds, (b) by requirements on purchasers of National Forest timber and other products, including provisions for amortization of road costs in contracts, (c) by cooperative financing with other public agencies and with private agencies or persons, or (d) by a combination of these methods: *Provided,* That where roads of a higher standard than that needed in the harvesting and removal of the timber and other products covered by the particular sale are to be constructed, the purchaser of the National Forest timber and other products shall not be required to bear that part of the costs necessary to meet such higher standard, and the Chief may make such arrangements to this end as may be appropriate, including arrangements for performance of purchaser's road development work under the Act of March 3, 1925, as amended by section 5 of the Act of April 24, 1950 (16 U.S.C. 572).

(25 Stat. 357, 26 Stat. 1103, 30 Stat. 35-36, 1233, 38 Stat. 430, 46 Stat. 1421, 64 Stat. 82, 72 Stat. 885, as amended, 74 Stat. 215, 78

Stat. 1089; 16 U.S.C. 471, 478, 498, 525, 528-531, 532, 538, 551, 572, 23 U.S.C. 101, 205, 40 U.S.C. 257, 258a et seq.; 42 Atty. Gen. Op. No. 7; Comp. Gen. B-65972, May 19, 1947; 40 Comp. Gen. 372; 41 Comp. Gen. 1; 41 Comp. Gen. 576, and 42 Comp. Gen. 590)

[30 FR 5479, Apr. 16, 1965]

§§ 212.13—212.19 [Reserved]

§ 212.20 National Forest development trail system operation.

(a) *Forest development trails.* Forest development trails shall be identified on a map available to the public at the offices of the Forest Supervisors and District Rangers and shall be marked on the ground by appropriate signs which reasonably bring their location to the attention of the public.

[43 FR 20007, May 10, 1978]

§ 212.21 Pacific Crest National Scenic Trail.

The Pacific Crest National Scenic Trail as defined by the National Trails Systems Act, 82 Stat. 919, shall be administered primarily as a footpath and horseback riding trail by the Forest Service in consultation with the Secretary of the Interior. The use of motorized vehicles may be authorized by the Federal Agency administering the segment of trail involved when use of such vehicles is necessary to meet emergencies or to enable landowners or land users to have reasonable access to their lands or timber rights.

(82 Stat. 919 (16 U.S.C. 1241 et seq.))

[43 FR 20007, May 10, 1978]

PART 213—ADMINISTRATION OF LANDS UNDER TITLE III OF THE BANKHEAD-JONES FARM TENANT ACT BY THE FOREST SERVICE

Sec.

213.1 Designation, administration, and development of National Grasslands.
213.2 Authority for Chief, Forest Service, to group, define, and name national grasslands.
213.3 Protection, occupancy, use, administration, and exercise of reservations.
213.4 Prior rules and regulations superseded.

AUTHORITY: 50 Stat. 525, as amended; 7 U.S.C. 1010-1012.

§ 213.1 Designation, administration, and development of National Grasslands.

(a) The land utilization projects administered by Department of Agriculture designated in paragraph (e) of this section hereafter shall be named and referred to as "National Grasslands".

(b) The National Grasslands shall be a part of the National Forest system and permanently held by the Department of Agriculture for administration under the provisions and purposes of Title III of the Bankhead-Jones Farm Tenant Act.

(c) The National Grasslands shall be administered under sound and progressive principles of land conservation and multiple use, and to promote development of grassland agriculture and sustained-yield management of the forage, fish and wildlife, timber, water and recreational resources in the areas of which the National Grasslands are a part.

(d) In the administration of the National Grasslands the resources shall be managed so as to maintain and improve soil and vegetative cover, and to demonstrate sound and practical principles of land use for the areas in which they are located. The Chief of the Forest Service shall, to the extent such action is feasible provide that policies for management of the Federally-owned lands exert a favorable influence for securing sound land conservation practices on associated private lands.

(e) National Grasslands in the following States and counties are hereby grouped and designated as indicated:

State in which grassland is located	National grassland	Counties where located
Colorado	Pawnee	Weld.
	Comanche	Baca, Los Animas, Otero.
Idaho	Curlew	Oneida, Power.
Kansas	Cimarron	Morton, Stevens.
Nebraska	Oglala	Dawes, Sioux.
New Mexico	Kiowa	Colfax, Harding, Mora, Union.
North Dakota	Cedar River	Grant, Sioux.
	Sheyenne	Ransom, Richland.
	Little Missouri	Billings, Golden Valley, McKenzie, Slope.

State in which grassland is located	National grassland	Counties where located
Oklahoma	Rita Blanca	Cimarron.
Oklahoma-Texas	Black Kettle	Roger Mills (Okla.), Hemphill (Tex.).
Oregon	Crooked River.	Jefferson.
South Dakota	Buffalo Gap	Custer, Fall River, Jackson, Pennington.
	Grand River	Corson, Perkins, Ziebach.
	Fort Pierre	Jones, Lyman, Stanley.
Texas	Lyndon B. Johnson.	Montague, Wise.
	Rita Blanca	Dallas.
	Caddo	Fannin.
	McClellan Creek.	Gray.
Wyoming	Thunder Basin.	Campbell, Converse, Crook, Niobrara, Weston.

[25 FR 5845, June 24, 1960, as amended at 27 FR 12217, Dec. 11, 1962; 28 FR 6268, June 19, 1963; 41 FR 38164, Sept. 9, 1976]

§ 213.2 Authority for Chief, Forest Service, to group, define, and name national grasslands.

The Chief, Forest Service, is authorized to group the national grasslands into administrative units, define, change or modify their boundaries, and to provide such specific designations therefor as he finds necessary and desirable for effective and economical administration thereof and for public and official reference thereto.

[33 FR 12370, Sept. 4, 1968]

§ 213.3 Protection, occupancy, use, administration, and exercise of reservations.

(a) The rules and regulations applicable to the national forests as set forth in Title 36, Code of Federal Regulations, or as hereafter amended, supplemented, or promulgated, are hereby adopted as the rules and regulations to govern the exercise of reservations in conveyances to the United States and to prevent trespasses on and otherwise regulate the protection, use, occupancy, and administration of the National Grasslands and all other lands administered by the Forest Service under the provisions of Title III of the Bankhead-Jones Farm Tenant Act insofar as is practical and consistent with said act: *Provided*, That Forest Service officers may continue under delegated authority to acquire lands, to make exchanges, to grant easements and enter into leases, permits, agreements, contracts and memoranda of understanding involving such lands under such terms and conditions and for such consideration, fees or rentals as authorized by Title III of the said Act.

(b) Existing valid rights, reservations easements, leases, permits, agreements, contracts and memoranda of understanding affecting these lands shall continue in full force and effect so long as they remain valid in accordance with the terms thereof.

[27 FR 9217, Sept. 18, 1962]

§ 213.4 Prior rules and regulations superseded.

Except as provided in § 213.3, the rules and regulations heretofore issued for the land utilization projects are hereby superseded as to all such projects administered by the Forest Service, but not as to such project lands administered by other agencies.

[27 FR 9217, Sept. 18, 1962]

PART 216—INVOLVING THE PUBLIC IN THE FORMULATION OF FOREST SERVICE DIRECTIVES

Sec.
216.1 Purpose.
216.2 Definitions.
216.3 Applicability; relationship to other public participation opportunities.
216.4 Determining the need for formal public review on proposed Manual directives.
216.5 Documentation.
216.6 Notice and comment procedures for proposed Manual directives identified for formal public review.
216.7 Exemption of proposed Manual directives from normal procedures.
216.8 Availability of proposed Manual directives identified for formal public review.

AUTHORITY: Sec. 14, Forest and Rangeland Renewable Resources Planning Act of 1974, 88 Stat. 476 as amended, 90 Stat. 2949, 2958 (16 U.S.C. 1612).

SOURCE: 49 FR 16993, Apr. 23, 1984, unless otherwise noted.

§ 216.1 Purpose.

This part establishes procedures to ensure that Federal, State, and local governments and the public have adequate notice and opportunity to comment upon the formulation of standards, criteria, and guidelines applicable to Forest Service programs.

§ 216.2 Definitions.

(a) The *Forest Service Manual* consists of numerous volumes organized by numerically coded subject matter. The volumes contain legal authorities, responsibilities, delegations, and general instruction and direction needed on a continuous basis by Forest Service officers at more than one unit to plan and execute programs. The parent text is issued by the national headquarters and sets forth the policies, and other guidance applicable Service-wide. National directives are supplemented, as necesary, by Forest Service field offices. Supplements to the Forest Service Manual are applicable only within the Forest Service organizational jurisdiction for which they are issued. The Forest Service Manual is revised to conform to changing law, orders, regulations, or management needs.

(b) *Public participation activities* are actions initiated by the Forest Service to facilitate an exchange of information with the public. These actions include, but are not limited to, oral and written measures such as public notices, letters, discussion papers, and gatherings such as meetings, workshops, and hearings.

(c) *Standards, criteria, and guidelines* means those written policies, instructions, and orders, originated by the Forest Service and issued in the Forest Service Manual which establish the general framework for the management and conduct of Forest Service programs.

§ 216.3 Applicability; relationship to other public participation opportunities.

(a) The requirements described in this part do not apply to—

(1) Rules or regulations promulgated according to the requirements of the Administrative Procedure Act, 5 U.S.C. 553;

(2) Instructions, procedures, and other material issued in Forest Service Handbooks; and

(3) Proposed Manual directives which provide guidance and procedures on administrative support activities such as personnel matters, procurement, service contracting, and other routine business operations of the agency.

(b) This part does not supersede or replace the requirements of the National Environmental Policy Act as set forth in 40 CFR part 1500 and Chapter 1950 of the Forest Service Manual. The requirements described in this part do not apply where equivalent public notice and opportunity for comment on the contents of a proposed Manual directive are provided during compliance with NEPA procedures.

(c) The direction for management of many Forest Service programs is developed with public participation during land and resource management planning part 219, and other activities. The relevant results of such public participation shall be used in formulation of Forest Service Manual directives to avoid duplicating public participation efforts.

(d) In addition to the opportunity for formal public review and comment offered in this part, the public may informally review and comment on Manual material at other times.

(e) These regulations do not prevent informal consultation with selected Federal, State, and local governments and the public when such consultation is deemed appropriate in formulating Manual material.

§ 216.4 Determining the need for formal public review of proposed Manual directives.

(a) Agency officials responsible for formulating Manual directives containing applicable standards, criteria, and guidelines shall determine whether substantial public interest or controversy concerning a proposed Manual directive can be expected.

(b) The following shall be considered in making this determination:

(1) Direct written or oral communication with those known to be interested in the proposal;

(2) The degree to which the proposal is likely to adversely or beneficially affect the general public as well as those known to be interested in the proposal;

(3) The amount of change the proposal represents from current direction;

(4) The extent of recent news media coverage on subjects related to the proposal; and

(5) The amount of interest or controversy expressed on previous proposals on the same or similar subjects.

§ 216.5 Documentation.

The responsible Forest Service official shall document the results of the determination made pursuant to § 216.4(b), and the reasons therefor, in a concise written summary. The summary may be combined with documentation required by NEPA procedures or other applicable law or policy. The summary shall be prepared and filed at the same location as the Forest Service official responsible for developing the Manual directive.

§ 216.6 Notice and comment procedures for proposed Manual directives identified for formal public review.

(a) Where it is determined that substantial public interest or controversy concerning a proposed Manual directive can be expected, the following minimum requirements for notifying the public and giving opportunity to comment on the proposal apply:

(1) *National Forest and Ranger District Proposals.* The responsible official shall determine appropriate means of notifying the public. This may include, but is not limited to, legal notice in a newspaper of general circulation or press release. The public shall have a minimum of 30 calendar days to review and comment on the proposal.

(2) *Regional, Station, and Area Proposals.* The responsible official shall determine appropriate means of notifying the public. This may inlcude, but is not limited to, notice and summary of the proposal in the FEDERAL REGISTER, legal notice in one or more newspapers of general circulation, or press release. The public shall have a minimum of 30 calendar days to review and comment on the proposal.

(3) *National Proposals.* The responsible official shall publish a notice and summary of the proposal in the FEDERAL REGISTER, followed by a minimum of 60 calendar days for public review and comment.

(b) Agency officials will give direct notice to Federal, State, and local governments and to the public known to be interested in the proposal. Along with the notice, the responsible official shall also provide either a complete proposal or a summary of the proposal for review.

(c) The responsible Forest Service official may conduct additional public participation activities related to the proposed Manual directive as are deemed appropriate and necessary.

(d) Comments received from the public shall be analyzed and considered in the formulation and preparation of the final Manual directive.

(e) The final Manual directive or a summary shall be sent to those who offered comments on the proposed directive and further publicized as deemed appropriate by the responsible official.

§ 216.7 Exemption of proposed Manual directives from normal procedures.

When it is found for good cause that an exigency exists, an interim Manual directive that is determined to be of substantial public interest or expected controversy may be issued in advance of providing opportunity for public comment. However, as soon as practicable after issuance, the interim Manual directive will be made available for public review and comment as described in § 216.6. In making the Manual directive available, the responsible official shall state why the interim directive was issued prior to obtaining public comments.

§ 216.8 Availability of proposed Manual directives identified for formal public review.

As a minimum, review copies of proposed Manual directives determined to be of substantial public interest or expected controversy shall be available in the Forest Supervisor's Office and

District Rangers' Offices when National Forest proposals are involved; in the Regional Office and Forest Supervisors' Offices when regional proposals are involved; and in Regional Offices and National Headquarters when national proposals are involved. When Manual directives involve Forest Service Research or State and Private Forestry programs, review copies shall be available at comparable administrative offices.

PART 217—REQUESTING REVIEW OF NATIONAL FOREST PLANS AND PROJECT DECISIONS

Sec.

217.1 Purpose and scope.
217.2 Definitions.
217.3 Decisions subject to appeal.
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217.5 Giving notice of decisions subject to appeal.
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217.20 Special procedures applicable to appeals of certain timber sales in Oregon and Washington.

AUTHORITY: 16 U.S.C. 551, 472.

SOURCE: 54 FR 3357, Jan. 23, 1989, unless otherwise noted.

§ 217.1 Purpose and scope.

(a) This subpart provides a process by which a person or organization interested in the management of the National Forest System may obtain review of an intended action by a higher level official. These rules establish who may appeal planned actions, the kind of decisions that may be appealed, the responsibilities of the participants in an appeal, and the procedures that apply.

(b) The process established in this part constitutes the final administrative opportunity for the public to influence National Forest System decisionmaking prior to implementation of various decisions. The rules of this subpart complement, but do not replace, numerous opportunities to participate in and influence agency decisionmaking provided pursuant to the National Environmental Policy Act of 1969 (NEPA), and the associated implementing regulations and procedures in 40 CFR parts 1500 through 1508, 36 CFR parts 216 and 219, Forest Service Manual Chapters 1920 and 1950, and Forest Service Handbooks 1909.12 and 1909.15. The rules do not provide an adjudication, grievance-oriented process. Rather, they provide an expeditious, objective review of NEPA derived decisions by an official at the next administrative level.

§ 217.2 Definitions.

For the purposes of this part—

Appellant is the term used to refer to a person or organization (or an authorized agent or representative acting on their behalf) filing a notice of appeal under this part.

Deciding Officer means the Forest Service line officer who has the delegated authority and responsibility to make the decision being questioned under these rules.

Decision document means a written document that a Deciding Officer signs to execute a decision subject to review under this part. Specifically a Record of Decision, a Decision Notice, or Decision Memo.

Decision documentation refers to the decision document and all relevant environmental and other analysis documentation on which the Deciding Officer based a decision that is at issue under the rules of this part. Decision documentation includes, but is not limited to, a project file for proposed actions categorically excluded from documentation in an environmental assessment or environmental impact statement, environmental assessments, findings of no significant impact, environmental impact statements, land and resource management plans, regional guides, documents incorporated by reference in any of the preceding documents, and drafts of these documents released for public review and comment.

Decision Memo is a concise memorandum to the files signed by a Deciding Officer recording a decision to take or implement an action that has been categorically excluded from documentation in either an environmental assessment or environmental impact statement (40 CFR 1508.4).

Decision Notice means the written document signed by a Deciding Officer when the decision was preceded by preparation of an environmental assessment (40 CFR 1508.9).

Decision review or *review* is the term used to refer to the process provided in this part by which a higher level officer reviews a decision of a subordinate officer in response to a notice of appeal.

Forest Service line officer. The Chief of the Forest Service or a Forest Service official who serves in a direct line of command from the Chief and who has the delegated authority to make and execute decisions under this subpart. Specifically, for the purposes of this subpart, a Forest Service employee who holds one of the following offices and titles: District Ranger, Forest Supervisor, Deputy Forest Supervisor, Regional Forester, Deputy Regional Forester, Deputy Chief, Associate Deputy Chief, Associate Chief, or the Chief of the Forest Service.

Intervenor is an individual who, or organization that, is interested in or potentially affected by a decision under appeal pursuant to this part, who has made a timely request to intervene in that appeal.

Legal notice. A notice of a decision appealable under this part published in the FEDERAL REGISTER or in the legal notices section of a newspaper of general circulation as required by § 217.5 of this part.

Notice of appeal is the written document filed with a Reviewing Officer by one who objects to a decision covered by this part and who requests review by the next higher line officer.

Participants include appellants, intervenors, the Deciding Officer, and the Reviewing Officer.

Record of Decision is the document signed by a Deciding Officer recording a decision that was preceded by preparation of an environmental impact statement (40 CFR 1505.2).

Reviewing Officer is the line officer one administrative level higher than the Deciding Officer or, in the case of a discretionary review, one level higher than the line officer who issued a first-level appeal decision.

[54 FR 3357, Jan. 23, 1989; 54 FR 13807, Apr. 5, 1989, as amended at 55 FR 7895, Mar. 6, 1990]

§ 217.3 Decisions subject to appeal.

(a) Except as provided in § 217.4 of this part, written decisions governing plans, projects, and activities to be carried out on the National Forest System that result from analysis, documentation, and other requirements of the National Environmental Policy Act and the National Forest Management Act, and the implementing regulations, policies, and procedures are subject to appeal under this part.

(1) Only decisions documented in a Decision Memo, Decision Notice, or a Record of Decision are subject to appeal under this part. Preliminary planning decisions or preliminary decisions as to National Environmental Policy Act or National Forest Management Act processes made prior to release of final plans, guides, and other environmental documents are not appealable until issuance of decision documents.

(2) Forestry research and State and private forestry programs and activity decisions are subject to appeal under this part, if a specific decision is documented pursuant to paragraph (a)(1) of this section, and would be carried out directly on National Forest System lands.

(b) Decisions subject to appeal under this part include, but are not limited to:

(1) Approval, amendment, and revision of a forest land and resource management plan prepared pursuant to 36 CFR part 219.

(2) Approval, and amendment of a regional guide for forest planning prepared pursuant to 36 CFR 219.8.

(3) Other projects and activities for which decision documents are prepared, such as timber sales, road and facility construction, range management and improvements, wildlife and fisheries habitat improvement measures, forest pest management activities, removal of certain minerals or mineral materials, conveyance of land or interests in land out of Federal ownership, and establishment or expansion of winter sports or other special recreation sites.

(c) Decisions on any of the matters listed in this section made by an authorized subordinate Forest Service staff officer acting within delegated authority are considered to be decisions of the Forest Service line officer to whom the subordinate employee reports.

[54 FR 3357, Jan. 23, 1989, as amended at 54 FR 34509, Aug. 21, 1989]

§ 217.4 Decisions not subject to appeal.

(a) The following decisions are not subject to appeal under this part:

(1) Decisions appealable to the Agriculture Board of Contract Appeals, U.S. Department of Agriculture, under 7 CFR part 24.

(2) Decisions involving Freeedom of Information Act denials under 7 CFR part 1 or Privacy Act determinations under 7 CFR 1.118.

(3) Decisions for which the jurisdiction of another Government agency or the Comptroller General supercedes that of the Department of Agriculture.

(4) Recommendations of Forest Service line officers to higher ranking Forest Service or Departmental officers or to other entities having final authority to implement the recommendation in question.

(5) Decisions appealable under separate administrative proceedings, including, but not limited to, those under 36 CFR 223.117, Administration of Cooperative or Federal Sustained Yield Units; 7 CFR 21.104, Eligibility for Relocation Payment or Amount; and 4 CFR part 21, Bid Protests.

(6) Decisions pursuant to Office of Management and Budget Circular A-76, Performance of Commercial Activities.

(7) Decisions concerning contracts under the Federal Property and Administration Services Act of 1949, as amended.

(8) Decisions covered by the Contract Disputes Act.

(9) Decisions involving Agency personnel matters.

(10) Decisions where relief sought is reformation of a contract or award of monetary damages.

(11) Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena such as wildfires, severe wind, earthquakes, and flooding when the Regional Forester or, in situations of national significance, the Chief of the Forest Service determines and gives notice in the Federal Register that good cause exists to exempt such decisions from review under this part.

(12) Decisions embodied in rulemaking promulgated in accordance with the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or in policies and procedures issued in the Forest Service Manual and handbooks (36 CFR parts 200 and 216).

(13) Decisions imposing penalties for archaeological violations under 36 CFR part 296.15 or for violations of prohibitions and orders under 36 CFR part 261.

(14) Decisions solely affecting the business relationship between the Forest Service and applicants for or holders of written instruments regarding occupancy and use of National Forest System lands except as provided for at 36 CFR part 251.82.

(b) In addition to decisions excluded from appeal by paragraph (a) of this section, the Forest Service shall dismiss any notice of appeal on subsequent implementing actions that result from the initial decision subject to review under this part as defined at § 217.3(b)(3). For example, an initial decision to offer a timber sale is appealable under this part; subsequent actions to advertise or award that sale are not appealable under this part. A subsequent implementing decision that is documented in a new decision document would be subject to appeal under this part.

[54 FR 3357, Jan. 23, 1989, as amended at 54 FR 34509, Aug. 21, 1989]

§ 217.5 Giving notice of decisions subject to appeal.

(a) For decisions subject to appeal under this part, Deciding Officers shall promptly mail the appropriate decision document (§ 217.3(a)(1)) to those who, in writing, have requested it, and to those who are known to have participated in the decisionmaking process.

(b) The Deciding Officer shall also give notice of decisions appealable under this part as follows:

(1) For all initial decisions of the Chief, notice shall be published in the FEDERAL REGISTER.

(2) For all other decisions, legal notice of the decision shall be published in a newspaper of general circulation identified pursuant to the requirements of paragraph (d) of this section. Deciding Officers may, at their discretion, also publish notice of their decisions in additional newspapers. Where a Deciding Officer elects to publish such additional notices, they shall be published after an initial legal notice has been published in the principal newspaper identified in the biannual FEDERAL REGISTER notice provided for in paragraph (d) of this section. Any such additional newspaper notices shall indicate the date that the appeal period ends, which shall be calculated based on the date of publication of the initial notice in the principal newspaper identified in the biannual FEDERAL REGISTER notice.

(c) All notices published pursuant to this section shall include a concise description of the decision made by title or subject matter, the date of the decision, the name and title of the official making the decision, and information on how to obtain a copy of the decision, and shall specify that the appeal period begins the day following the notice's publication as provided for in § 217.8(b)(1).

(d) Initially within 30 days of March 6, 1990, and thereafter at least twice annually, in April and in October, each responsible Forest Service officer shall, through FEDERAL REGISTER notice, advise the public of the principal newspaper to be utilized for publishing legal notices required by this section. The FEDERAL REGISTER notice shall also list all additional newspapers which the Deciding Officer expects to use for purposes of providing additional notice pursuant to paragraph (b) of this section.

[54 FR 3357, Jan. 23, 1989, as amended at 55 FR 7895, Mar. 6, 1990]

§ 217.6 Participants.

(a) Other than Forest Service employees, any person or any non-Federal organization or entity may challenge a decision covered by this part and request a review by the Forest Service line officer at the next administrative level.

(b) An intervenor as defined in § 217.2 of the subpart.

§ 217.7 Levels of appeal.

(a) *Decisions made by the Chief.* If the Chief of the Forest Service is the Deciding Officer, the notice of appeal is filed with the Secretary of Agriculture. Review by the Secretary is wholly discretionary. Within 15 days of receipt of a notice of appeal, the Secretary shall determine whether or not to review the decision in question. If the Secretary has not decided to review the Chief's decision by the expiration of the 15-day period, the requester(s) shall be notified by the Secretary's office that the Chief's decision is the final administrative decision of the Department of Agriculture. When the Secretary elects to review an initial decision made by the Chief, the Secretary shall conduct the review in accordance with the first level appeal procedures outlined in this rule.

(b) *Decisions made by Forest Supervisors and Regional Foresters.* Only one level of administrative review is available on written decisions by Forest Service line officers below the level of the Chief and above the level of the District Ranger. The levels of available review are as follows:

(1) If the decision is made by a Forest Supervisor, the notice of appeal is filed with the Regional Forester;

(2) If the decision is made by a Regional Forester, the notice of appeal is

filed with the Chief of the Forest Service.

(c) *Decisions made by the District Ranger.* Two levels of appeal are available for written decisions by the District Ranger.

(1) The initial appeal is filed with the Forest Supervisor.

(2) The notice of appeal for a second level of review must be filed with the Regional Forester within 15 days of the Forest Supervisor's appeal decision. Upon receiving the appeal, the Regional Forester shall promptly request the first level appeal record from the Forest Supervisor. The review shall be conducted on the existing file and no additional information shall be added to the file.

(d) *Discretionary review of dismissal decisions.* Dismissal decisions rendered by Forest Service line officers pursuant to this part (§ 217.11) are subject to only one level of discretionary review (§ 217.11) as follows:

(1) If the Reviewing Officer was the Forest Supervisor, the Regional Forester has discretion to review.

(2) If the Reviewing Officer was the Regional Forester, the Chief has discretion to review.

(3) If the Reviewing Officer was the Chief, the Secretary of Agriculture has discretion to review.

(e) *Discretionary review of appeal decisions.* Appeal decisions rendered by Regional Foresters and the Chief pursuant to this part are subject to only one level of discretionary review as follows:

(1) If the Reviewing Officer was the Regional Forester, the Chief has discretion to review, except as provided for in paragraph (e)(3) of this section.

(2) If the Reviewing Officer was the Chief, the Secretary of Agriculture has discretion to review.

(3) A Regional Forester's decision on a second-level appeal constitutes the final administrative determination of the Department of Agriculture on the appeal and is not subject to discretionary review by a higher level officer under the subpart.

[54 FR 3357, Jan. 23, 1989, as amended at 54 FR 34509, Aug. 21, 1989]

§ 217.8 Appeal process sequence.

(a) *Filing procedures.* To appeal a decision under this part, a person or organization must:

(1) File a written notice of appeal with the next higher line officer in accordance with the provisions of § 217.9 of this part and simultaneously send a copy of the notice of the appeal to the Deciding Officer. As provided in § 217.11, failure to comply with the simultaneous filing requirement of this section shall result in dismissal of the appeal without a decision on the merits.

(2) File the notice of appeal within 45 days of the date specified in the published legal notice for project decisions or non-significant amendments to land and resource management plans documented in a Decision Memo, Decision Notice, or Record of Decision, or programmatic decisions documented in a Decision Notice.

(3) File the notice of appeal within 90 days of the date specified in the published legal notice for land and resource management plan approvals, significant amendments, or revisions, and for other programmatic decisions documented in a Record of Decision.

(b) *Computation of time periods.* (1) The day after the published notices required in § 217.5(b) is the first day of the appeal period provided for in paragraphs (a)(2) and (a)(3) of this section. All other time periods applicable to this part are tied to the filing of a notice of appeal and begin on the first day following that filing.

(2) All time periods in this rule are to be computed using calendar days. Saturdays, Sundays, and Federal holidays are included in computing the time period for filing a notice of appeal; however, when the filing period would expire on a Saturday, Sunday, or Federal holiday, the filing time is extended to the end of the next Federal working day.

(c) *Evidence of timely filing.* It is the responsibility of the appellant to file the notice on or before the last day of the filing period. In the event of question, a legible postmark will be considered evidence of timely filing. Where postmarks are illegible, the Reviewing Officer shall rule on the timely filing of the appeal. Notices of appeal that are filed before the filing period specified in the published legal notice shall be accepted, but premature filing does not affect timeframes specified in this rule.

(d) *Time extensions.* (1) The 45-day/90-day filing periods for a notice of appeal are not extendable.

(2) Time extensions are not permitted except as provided in §§ 217.12, 217.13, and 217.17 of this subpart.

(e) *Appeal decision.* Unless time has been extended as provided for in §§ 217.12 and 217.13, the Reviewing Officer shall not exceed the following time periods for rendering an appeal decision:

(1) An appeal of a project decision, not more than 100 days from the date the notice of appeal was filed.

(2) An appeal of a land and resource management plan approval, significant amendment, or revision, or on a programmatic decision documented in a Record of Decision, not more than 160 days from the date the notice of appeal was filed.

(3) A second-level appeal of a District Ranger's decision, not more than 30 days from the date the first-level appeal record was received.

(4) In the event of multiple appeals of the same decision, the appeal decision date shall be calculated from the filing date of the last notice of appeal.

[54 FR 3357, Jan. 23, 1989, as amended at 55 FR 7895, Mar. 6, 1990]

§ 217.9 Content of a notice of appeal.

(a) It is the responsibility of those who appeal a decision under this part to provide a Reviewing Officer sufficient narrative evidence and argument to show why the decision by the lower level officer should be changed or reversed.

(b) At a minimum, a written notice of appeal filed with the Reviewing Officer must:

(1) State that the document is a Notice of Appeal filed pursuant to 36 CFR part 217;

(2) List the name, address, and telephone number of the appellant;

(3) Identify the decision about which the requester objects;

(4) Identify the document in which the decision is contained by title and subject, date of the decision, and name and title of the Deciding Officer.

(5) Identify specifically that portion of the decision or decision document to which the requester objects;

(6) State the reasons for objecting, including issues of fact, law, regulation, or policy, and, if applicable, specifically how the decision violates law, regulation, or policy; and

(7) Identify the specific change(s) in the decision that the appellant seeks.

(c) When a Notice of Appeal is more than 10 pages in length, appellants must file two copies of a Notice of Appeal with the Reviewing Officer and simultaneously send two copies to the Deciding Officer.

[54 FR 3357, Jan. 23, 1989, as amended at 55 FR 7895, Mar. 6, 1990]

§ 217.10 Implementation and stays of decisions.

(a) Implementation of any decision subject to appeal pursuant to this part shall not occur for 7 calendar days following publication of the legal notice of the decision as required in this part.

(b) Requests to stay the approval of land and resource management plans prepared pursuant to 36 CFR part 219 shall not be granted. However, requests to stay implementation of a project or activity included in such a plan will be considered as provided for in paragraph (b) of this section.

(c) Where a project or activity would be implemented before an appeal decision could be issued, the Reviewing Officer shall consider written requests to stay implementation of that decision pending completion of the review.

(d) To request a stay of implementation, an appellant must—

(1) File a written request with the Reviewing Officer;

(2) Simultaneously send a copy of the stay request to any other appellant(s), intervenor(s), and to the Deciding Officer; and

(3) Provide a written justification of the need for a stay, which at a minimum includes the following:

(i) A description of the specific project(s), activity(ies), or action(s) to be stopped.

(ii) Specific reasons why the stay should be granted in sufficient detail to permit the Reviewing Officer to evaluate and rule upon the stay request, including at a minimum:

(A) The specific adverse effect(s) upon the requester;

(B) Harmful site-specific impacts or effects on resources in the area affected by the activity(ies) to be stopped; and

(C) How the cited effects and impacts would prevent a meaningful decision on the merits.

(e) The Reviewing Officer shall rule on stay requests within 10 days of receipt of a request.

(f) In deciding a stay request, a Reviewing Officer shall consider:

(1) Information provided by the requester pursuant to paragraph (c) of this section;

(2) The effect that granting a stay would have on preserving a meaningful appeal on the merits;

(3) Any information provided by the Deciding Officer or other party to the appeal in response to the stay request; and

(4) Any other factors the Reviewing Officer considers relevant to the decision.

(g) A Reviewing Officer must issue a written decision on a stay request.

(1) If a stay is granted, the stay shall specify the specific activities to be stopped, duration of the stay, and reasons for granting the stay.

(2) If a stay is denied in whole or in part, the decision shall specify the reasons for the denial.

(3) A copy of a decision on a stay request shall be sent to the appellant(s), intervenor(s), and the Deciding Officer.

(h) A decision may be implemented during a review unless the Reviewing Officer has granted a stay.

(i) A Reviewing Officer's decision on a request to stay implementation of a project or activity is not subject to discretionary review at the next administrative level, except when the Reviewing Officer is the Forest Supervisor. In this instance, the Regional Forester has discretion to review.

[54 FR 3357, Jan. 23, 1989, as amended at 55 FR 7896, Mar. 6, 1990]

§ 217.11 Dismissal without review.

(a) A Reviewing Officer shall dismiss an appeal and close the appeal record without decision on the merits when:

(1) The notice is not filed within the time specified in § 217.8 of this part;

(2) The requested relief or change cannot be granted under law, fact, or regulation existing when the decision was made.

(3) The notice of appeal fails to meet the minimum requirements of § 217.9 of this part to such an extent that the Reviewing Officer lacks adequate information on which to base a decision;

(4) The decision at issue is being appealed under another administrative proceeding;

(5) The decision is excluded from appeal pursuant to § 217.4 of this part;

(6) The appellant(s) withdraws the appeal; or

(7) The appellant fails to file the notice of appeal with the Reviewing Officer and simultaneously send a copy to the Deciding Officer as required in § 217.8(a).

(b) The Reviewing Officer shall give written notice of a dismissal to all participants that includes an explanation of why the appeal is dismissed.

(c) A Reviewing Officer's dismissal decision is subject to discretionary review at the next administrative level as provided for in § 217.7(d) of this part, except when a dismissal decision results from withdrawal of an appeal by an appellant or withdrawal of the initial decision by the Deciding Officer.

[54 FR 3357, Jan. 23, 1989, as amended at 55 FR 7896, Mar. 6, 1990]

§ 217.12 Resolution of issues.

(a) When a decision is appealed, appellants or intervenors may request meetings with the Deciding Officer to discuss the appeal, either together or separately, to narrow issues, agree on facts, and explore opportunities to resolve the issues by means other than review and decision on the appeal. Reviewing Officers may, on their own initiative, request the Deciding Officer to meet the participants to discuss the appeal and explore opportunities to resolve the issues. However, Reviewing Officers may not participate in such discussions. At the request of the Deciding Officer, or on their own initiative, Reviewing Officers may extend the time periods for review to allow for conduct of meaningful negotiations after the Deciding Officer has transmitted the decision documentation and after the time period for intervention has elapsed. In granting an extension, the Reviewing Officer must establish a specific time period for the conduct of negotiations.

(b) The Deciding Officer has the authority to withdraw a decision, in whole or in part, during the appeal. Where a Deciding Officer decides to withdraw a decision, all participants to the appeal will be notified that the case is dismissed. A Deciding Officer's subsequent decision to reissue or modify the withdrawn decision constitutes a new decision and is subject to appeal under this part.

[54 FR 3357, Jan. 23, 1989; 54 FR 13807, Apr. 5, 1989, as amended at 55 FR 7896, Mar. 6, 1990]

§ 217.13 Reviewing officer authority.

(a) *Discretion to establish procedures.* A Reviewing Officer may issue such determinations and procedural instructions as appropriate to ensure orderly and expeditious conduct of the appeal process as long as they are in accordance with all the applicable rules and procedures of this part.

(1) In appeals involving intervenors, the Reviewing Officer may prescribe special procedures to conduct the appeal.

(2) In case of multiple appeals of a decision, the Reviewing Officer may prescribe special procedures as necessary to conduct the review.

(3) All participants shall receive notice of any procedural instructions or decisions governing conduct of an appeal.

(4) Procedural instructions and decisions are not subject to review by higher level officers.

(b) *Consolidation of multiple appeals.* (1) The Reviewing Officer shall determine whether to issue one appeal decision or separate decisions in cases involving multiple notices of appeal under this part, or if the same decision is also under appeal pursuant to 36 CFR Part 251. In the event of a consolidated decision, the Reviewing Officer shall give advance notice to all who have appealed the decision.

(2) Decisions to consolidate an appeal decision are not subject to review by higher level officers.

(c) *Requests for information.* At any time during the appeal process, the Reviewing Officer at the levels specified in § 217.7 (a), (b), or (c)(1) of this part may extend the time periods for review to request additional information from an appellant, intervenor, or the Deciding Officer. Such requests shall be limited to obtaining and evaluating information needed to clarify issues raised. The Reviewing Officer shall notify all participants of such requests and provide them opportunity to comment on the information obtained.

[54 FR 3357, Jan. 23, 1989, as amended at 54 FR 34509, Aug. 21, 1989]

§ 217.14 Intervention.

(a) For a period not to exceed 20 days following the filing of a first level notice of appeal, the Reviewing Officer shall accept requests to intervene in the appeal from any interested or potentially affected person or organization. Requests to intervene in an appeal at the second level (§ 217.7(c)) or during the discretionary review (§ 217.7(e)) shall not be accepted.

(b) Upon receiving such a request, the Reviewing Officer shall promptly acknowledge the request, in writing, and mail the Notice of Appeal to the intervenor.

(c) The Reviewing Officer shall accept into the appeal record written comments about the appeal from an intervenor for a period not to exceed 30 days following acknowledgement of the intervention request (§ 217.14(b)).

(d) Intervenors must concurrently furnish copies of all submissions to the appellant. Failure to provide copies may result in removal of a submission from the appeal record.

(e) An intervenor cannot continue an appeal if the appeal is dismissed (§ 217.11).

§ 217.15 Appeal record.

(a) Upon receipt of a copy of the notice of appeal, the Deciding Officer shall assemble the relevant decision documentation (§ 217.2) and pertinent records, and transmit them to the Reviewing Officer within 30 days. The 30-day time period is not extendable under any circumstances.

(b) In transmitting the decision documentation to the Reviewing Officer, the Deciding Officer shall indicate where the documentation addresses the issues raised in the notice of appeal. The Deciding Officer shall provide a copy of the transmittal letter to the appellant(s) and intervenor(s).

(c) The review of decisions appealed under this part focuses on the documentation developed by the Deciding Officer in reaching decisions. The records on which the Reviewing Officer shall conduct the review consists of the notice of appeal, any written comments submitted by intervenors, the official documentation prepared by the Deciding Officer in the decisionmaking process, the Deciding Officer's letter transmitting those documents to the Reviewing Officer, and any appeal related correspondence, including additional information requested by the Reviewing Officer pursuant to § 217.13 of this part.

(d) It is the responsibility of the Reviewing Officer to maintain in one location a file of documents related to the decision and appeal.

(e) *Closing the record.* (1) In appeals with intervenors, the appeal record shall close upon receipt of comments on the appeal by the intervenor, but not later than the end of the 30-day period provided for intervenors to submit comments (§ 217.14(c)).

(2) In appeals without intervenors, the appeal record shall close upon receipt of the decision documentation from the Deciding Officer, unless time has been extended as provided for in §§ 217.12 and 217.13.

(f) The appeal record is open to public inspection at any time during the review.

(g) In appeals involving initial decisions of the Chief (217.7(a)), the establishment of an administrative record as defined in paragraph (a) of this section shall not begin unless the Secretary elects to review the appeal. Except for the initial notice of appeal, any filings made previous to the Secretary's election to review will not be accepted.

[54 FR 3357, Jan. 23, 1989, as amended at 54 FR 34509, Aug. 21, 1989; 55 FR 7896, Mar. 6, 1990]

§ 217.16 Decision.

(a) The Reviewing Officer shall not issue a decision prior to the record closing (§ 217.15(e)).

(b) The Reviewing Officer's decision shall, in whole or in part, affirm or reverse the original decision. The Reviewing Officer's decision may include instructions for further action by the Deciding Officer.

(c) An appeal decision must be consistent with applicable law, regulations, and orders.

(d) The Reviewing Officer shall send a copy of the decision to all participants and to others upon request.

(e) Unless a higher level officer exercises the discretion to review a Reviewing Officer's decision as provided at § 217.7(e), or the Reviewing Officer is a Forest Supervisor, the Reviewing Officer's decision is the final administrative decision of the Department of Agriculture and that decision is not subject to further review under this part.

§ 217.17 Discretionary review.

(a) Petitions or requests for discretionary review shall not, in and of themselves, give rise to a decision to exercise discretionary review. In electing to exercise discretion, a Reviewing Officer should consider, but is not limited to, such factors as controversy surrounding the decision, the potential for litigation, whether the decision is precedential in nature, or whether the decision modifies existing or establishes new policy.

(b) As provided for in §§ 217.7 (d) and (e), 217.10(h), and 217.11, stay decisions rendered by a Forest Supervisor, certain dismissal decisions rendered by Forest Service line officers, and first-level appeal decisions rendered by Regional Foresters and the Chief (§ 217.16) are subject to discretionary review at the next highest administrative level. Within one day following the date of any decision subject to such discretionary review, the Reviewing Officer shall forward a copy of the decision and the decision documents (§ 217.2) upon which the appeal was predicated to the next higher officer.

(c) When a stay of implementation is in effect, it shall remain in effect until the end of the 15-day period in which a higher level officer must decide whether or not to review a Reviewing Officer's decision (§ 217.17(d)), or until the end of the 15-day period provided for a second level appeal of a District Ranger's decision (§ 217.7(c)). If the higher level officer decides to review the Reviewing Officer's decision or a second level appeal is filed, the stay will remain in effect until a decision is issued (§ 217.17(f)), or until the end of the 30-day review period provided in §217.17(g), whichever is less.

(d) The higher level officer shall have 15 days from date of receipt to decide whether or not to review a lower level appeal decision, and may request and use the appeal record in deciding whether or not to review the decision, including decisions to dismiss. If the record is requested, the 15-day period is suspended at that point. The lower level Reviewing Officer shall forward it within 5 days of the request. Upon receipt, the higher level officer shall have 15 days to decide whether or not to review the lower level decision. If that officer takes no action by the expiration of the 15-day period or the additional 15-day period following receipt of the record, the decision of the Reviewing Officer stands as the final administrative decision of the Department of Agriculture. All participants shall be notified by the discretionary level whether or not the decision will be reviewed.

(e) Where an official exercises the discretion in § 217.7 (d) or (e) of this subpart to review a dismissal or appeal decision, the discretionary review shall be made on the existing appeal record and the lower level Reviewing Officer's appeal decision. The record shall not be reopened to accept additional submissions from any source including the Reviewing Officer whose appeal decision is being reviewed.

(f) The second level Reviewing Officer shall conclude the review within 30 days of the date of notice issued to participants that the lower level decision will be reviewed, and shall send a copy of the review decision to all participants.

(g) If a discretionary review decision is not issued by the end of the 30-day review period, appellants and intervenors shall be deemed to have exhausted their administrative remedies for purposes of judicial review. In such case, the participants shall be notified by the discretionary level.

[54 FR 3357, Jan. 23, 1989; 54 FR 13807, Apr. 5, 1989, as amended at 54 FR 34510, Aug. 21, 1989; 55 FR 7896, Mar. 6, 1990]

§ 217.18 Policy in event of judicial proceedings.

It is the position of the Department of Agriculture that any filing for Federal judicial review of a decision subject to review under this part is premature and inappropriate unless the plaintiff has first sought to invoke and exhaust the procedures available under this part. This position may be waived upon a written finding by the Chief.

§ 217.19 Applicability and effective date.

(a) The appeal procedures established in this part apply to all appealable decision documents signed on or after February 22, 1989.

(b) Notices of appeal filed under 36 CFR 211.16, 36 CFR 211.18, 36 CFR 228.14, and 36 CFR 292.15 prior to February 22, 1989 remain subject to those procedures.

[54 FR 3357, Jan. 23, 1989, as amended at 54 FR 6892, Feb. 15, 1989]

§ 217.20 Special procedures applicable to appeals of certain timber sales in Oregon and Washington.

(a) Pursuant to section 318 of Pub. L. 101-121, decisions made in Fiscal Year 1990 to offer timber for sale on the 13 national forests in Oregon and Washington listed in paragraph (b) of this section and documented in a Decision Memo, Decision Notice, or Record of Decision shall be subject to appeal under the special procedures of this section.

(b) Decisions subject to appeal under this section are limited to decisions made to offer timber for sale between

October 24, 1989, and September 30, 1990, and awarded prior to September 30, 1990, on the Deschutes, Mt. Hood, Rogue River, Siskiyou, Siuslaw, Umpqua, Willamette, Winema, Gifford Pinchot, Mt. Baker-Snoqualmie, Okanogan, Olympic, and Wenatchee National Forests.

(c) Notwithstanding other provisions of this part, the following procedures shall apply to appeals of decisions covered by this section:

(1) Only one level of appeal shall be available.

(2) An appeal decision rendered pursuant to this section shall not be subject to discretionary review (§ 217.17).

(3) If a stay is granted on any decision covered by this section, the appeal decision shall be issued by the Regional Forester 45 days from the date the stay is granted.

(4) If a stay is granted, anyone wishing to intervene shall have 15 days following the granting of a stay to file a notice of intervention and comments; otherwise, the timeframe for intervention set forth in § 217.14 of this part shall apply.

(5) In the event of a filing for Federal judicial review of a decision subject to this section prior to issuance of an appeal decision, the Department shall not invoke the policy set forth in § 217.18 of this part.

(6) If, during the pendency of an appeal, the same decision is challenged in Court, the Reviewing Officer shall close and dismiss the appeal without a decision on the merits and notify the parties to the appeal.

(d) Except as otherwise provided by, and to the extent not inconsistent with, this section, all other provisions of this part shall apply to any appeal covered by this section.

(e) The appeal procedures of this section apply to timber sale decisions made after October 23, 1989 and prior to October 1, 1990, for timber sales to be awarded prior to October 1, 1990.

[54 FR 46893, Nov. 8, 1989]

PART 219—PLANNING

Subpart A—National Forest System Land and Resource Management Planning

Sec.

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Subpart A—National Forest System Land and Resource Management Planning

AUTHORITY: Secs. 6 and 15, 90 Stat. 2949, 2952, 2958 (16 U.S.C. 1604, 1613); and 5 U.S.C. 301.

SOURCE: 47 FR 43037, Sept. 30, 1982, unless otherwise noted.

§ 219.1 Purpose and principles.

(a) The regulations in this subpart set forth a process for developing, adopting, and revising land and resource management plans for the National Forest System as required by the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended (hereafter, "RPA"). These regulations prescribe how land and resource management planning is to be conducted on National Forest System lands. The resulting plans shall provide for multiple use and sustained yield of goods and services from the National Forest System in a way that maximizes long term net public benefits in an environmentally sound manner.

(b) Plans guide all natural resource management activities and establish management standards and guidelines for the National Forest System. They determine resource management practices, levels of resource production and management, and the availability and suitability of lands for resource management. Regional and forest planning will be based on the following principles:

(1) Establishment of goals and objectives for multiple-use and sustained-yield management of renewable resources without impairment of the productivity of the land;

(2) Consideration of the relative values of all renewable resources, including the relationship of nonrenewable resources, such as minerals, to renewable resources;

(3) Recognition that the National Forests are ecosystems and their management for goods and services requires an awareness and consideration of the interrelationships among plants, animals, soil, water, air, and other environmental factors within such ecosystems;

(4) Protection and, where appropriate, improvement of the quality of renewable resources;

(5) Preservation of important historic, cultural, and natural aspects of our national heritage;

(6) Protection and preservation of the inherent right of freedom of American Indians to believe, express, and exercise their traditional religions;

(7) Provision for the safe use and enjoyment of the forest resources by the public;

(8) Protection, through ecologically compatible means, of all forest and rangeland resources from depredations by forest and rangeland pests;

(9) Coordination with the land and resource planning efforts of other Federal agencies, State and local governments, and Indian tribes;

(10) Use of a systematic, interdisciplinary approach to ensure coordination and integration of planning activities for multiple-use management;

(11) Early and frequent public participation;

(12) Establishment of quantitative and qualitative standards and guidelines for land and resource planning and management;

(13) Management of National Forest System lands in a manner that is sensitive to economic efficiency; and

(14) Responsiveness to changing conditions of land and other resources and to changing social and economic demands of the American people.

§ 219.2 Scope and applicability.

The regulations in this subpart apply to the National Forest System, which includes special areas, such as wilderness, wild and scenic rivers, national recreation areas, and national trails. Whenever the special area authorities require additional planning, the planning process under this subpart shall be subject to those authorities.

(a) Unless inconsistent with special area authorities, requirements for additional planning for special areas shall be met through plans required under this subpart.

(b) If, in a particular case, special area authorities require the preparation of a separate special area plan, the direction in any such plan may be incorporated without modification in plans prepared under this subpart.

§ 219.3 Definitions and terminology.

For purposes of this subpart the following terms, respectively, shall mean:

Allowable sale quantity: The quantity of timber that may be sold from the area of suitable land covered by the forest plan for a time period specified by the plan. This quantity is usually expressed on an annual basis as the "average annual allowable sale quantity."

Base sale schedule: A timber sale schedule formulated on the basis that the quantity of timber planned for sale and harvest for any future decade is equal to or greater than the planned sale and harvest for the preceding decade, and this planned sale and harvest for any decade is not greater than the long-term sustained yield capacity.

Biological growth potential: The average net growth attainable in a fully stocked natural forest stand.

Capability: The potential of an area of land to produce resources, supply goods and services, and allow resource uses under an assumed set of management practices and at a given level of management intensity. Capability depends upon current conditions and site conditions such as climate, slope, landform, soils, and geology, as well as the application of management practices, such as silviculture or protection from fire, insects, and disease.

Corridor: A linear strip of land identified for the present or future location of transportation or utility rights-of-way within its boundaries.

Cost efficiency: The usefulness of specified inputs (costs) to produce specified outputs (benefits). In measuring cost efficiency, some outputs, including environmental, economic, or social impacts, are not assigned monetary values but are achieved at specified levels in the least cost manner. Cost efficiency is usually measured using present net value, although use of benefit-cost ratios and rates-of-return may be appropriate.

Diversity: The distribution and abundance of different plant and animal communities and species within the area covered by a land and resource management plan.

Even-aged management: The application of a combination of actions that results in the creation of stands in which trees of essentially the same age grow together. Managed even-aged forests are characterized by a distribution of stands of varying ages (and, therefore, tree sizes) throughout the forest area. The difference in age between trees forming the main canopy level of a stand usually does not exceed 20 percent of the age of the stand at harvest rotation age. Regeneration in a particular stand is obtained during a short period at or near the time that a stand has reached the desired age or size for regeneration and is harvested. Clearcut, shelterwood, or seed tree cutting methods produce even-aged stands.

Forest land: Land at least 10 percent occupied by forest trees of any size or formerly having had such tree cover and not currently developed for non-forest use. Lands developed for non-forest use include areas for crops, improved pasture, residential, or administrative areas, improved roads of any width, and adjoining road clearing and powerline clearing of any width.

Goal: A concise statement that describes a desired condition to be achieved sometime in the future. It is normally expressed in broad, general terms and is timeless in that it has no specific date by which it is to be completed. Goal statements form the principal basis from which objectives are developed.

Goods and services: The various outputs, including on-site uses, produced from forest and rangeland resources.

Integrated pest management: A process for selecting strategies to regulate forest pests in which all aspects of a pest-host system are studied and weighed. The information considered in selecting appropriate strategies includes the impact of the unregulated pest population on various resources values, alternative regulatory tactics and strategies, and benefit/cost estimates for these alternative strategies. Regulatory strategies are based on sound silvicultural practices and ecology of the pest-host system and consist of a combination of tactics such as timber stand improvement plus selective use of pesticides. A basic principle in the choice of strategy is that it be ecologically compatible or acceptable.

Long-term sustained-yield timber capacity: The highest uniform wood yield from lands being managed for timber production that may be sustained under a specified management intensity consistent with multiple-use objectives.

Management concern: An issue, problem, or a condition which constrains the range of management practices identified by the Forest Service in the planning process.

Management direction: A statement of multiple-use and other goals and objectives, the associated management prescriptions, and standards and guidelines for attaining them.

Management intensity: A management practice or combination of management practices and associated costs designed to obtain different levels of goods and services.

Management practice: A specific activity, measure, course of action, or treatment.

Management prescription: Management practices and intensity selected and scheduled for application on a specific area to attain multiple-use and other goals and objectives.

Multiple use: The management of all the various renewable surface resources of the National Forest System so that they are utilized in the combination that will best meet the needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; that some lands will be used for less than all of the resources; and harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.

Net public benefits: An expression used to signify the overall long-term value to the nation of all outputs and positive effects (benefits) less all associated inputs and negative effects (costs) whether they can be quantitatively valued or not. Net public benefits are measured by both quantitative and qualitative criteria rather than a single measure or index. The maximization of net public benefits to be derived from management of units of the National Forest System is consistent with the principles of multiple use and sustained yield.

Objective: A concise, time-specific statement of measurable planned results that respond to pre-established goals. An objective forms the basis for further planning to define the precise steps to be taken and the resources to be used in achieving identified goals.

Planning area: The area of the National Forest System covered by a regional guide or forest plan.

Planning period: One decade. The time interval within the planning horizon that is used to show incremental changes in yields, costs, effects, and benefits.

Planning horizon: The overall time period considered in the planning process that spans all activities covered in the analysis or plan and all future conditions and effects of proposed actions which would influence the planning decisions.

Present net value: The difference between the discounted value (benefits) of all outputs to which monetary values or established market prices are assigned and the total discounted costs of managing the planning area.

Public issue: A subject or question of widespread public interest relating to management of the National Forest System.

Real dollar value: A monetary value which compensates for the effects of inflation.

Receipt shares: The portion of receipts derived from Forest Service resource management that is distributed to State and county governments, such as the Forest Service 25 percent fund payments.

Responsible line officer: The Forest Service employee who has the authority to select and/or carry out a specific planning action.

Sale schedule: The quantity of timber planned for sale by time period from an area of suitable land covered by a forest plan. The first period, usually a decade, of the selected sale schedule provides the allowable sale quantity. Future periods are shown to establish that long-term sustained yield will be achieved and maintained.

Silvicultural system: A management process whereby forests are tended, harvested, and replaced, resulting in a forest of distinctive form. Systems are classified according to the method of carrying out the fellings that remove the mature crop and provide for regeneration and according to the type of forest thereby produced.

Suitability: The appropriateness of applying certain resource management practices to a particular area of land, as determined by an analysis of the economic and environmental consequences and the alternative uses foregone. A unit of land may be suitable for a variety of individual or combined management practices.

Sustained-yield of products and services: The achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the National Forest System without impairment of the productivity of the land.

Timber production: The purposeful growing, tending, harvesting, and regeneration of regulated crops of trees to be cut into logs, bolts, or other round sections for industrial or consumer use. For purposes of this subpart, the term "timber production" does not include production of fuelwood.

Uneven-aged management: The application of a combination of actions needed to simultaneously maintain continuous high-forest cover, recurring regeneration of desirable species, and the orderly growth and development of trees through a range of diameter or age classes to provide a sustained yield of forest products. Cutting is usually regulated by specifying the number or proportion of trees of particular sizes to retain within each area, thereby maintaining a planned distribution of size classes. Cutting methods that develop and maintain uneven-aged stands are single-tree selection and group selection.

§ 219.4 Planning levels.

(a) *General guideline.* Planning requires a continuous flow of information and management direction among the three Forest Service administrative levels: national, regional, and forest. Management direction shall: (1) Include requirements for analysis to determine programs that maximize net public benefits, consistent with locally derived information about production capabilities; (2) reflect production capabilities, conditions and circumstances observed at all levels; and (3) become increasingly specific as planning progresses from the national to the forest level. In this structure, regional planning is a principal process for conveying management direction from the national level to the forest level and for conveying information from forest level to the national level. The planning process is essentially iterative in that the information from the forest level flows up to the national level where in turn information in the RPA Program flows back to the forest level.

(b) *Planning levels and relationships*—(1) *National.* The Chief of the Forest Service shall develop the Renewable Resources Assessment and Program (hereafter, "RPA Assessment and RPA Program") according to sections 3 and 4 of the RPA.

(i) *RPA Assessment.* The RPA Assessment shall include analysis of present and anticipated uses, demand for, and supply of the renewable resources of forest, range, and other associated lands with consideration of, and an emphasis on, pertinent supply, demand, and price relationship trends; an inventory of present and potential renewable resources and an evaluation of opportunities for improving their yield of tangible and intangible goods and services, together with estimates of investment costs and direct and indirect returns to the Federal Government; a description of Forest Service programs and responsibilities in research, cooperative programs, and management of the National Forest System; and analysis of important policy issues and consideration of laws, regulations, and other factors expected to influence and affect significantly the use, ownership, and management of forest, range, and other associated lands. The RPA Assessment shall be based on the future capabilities of forest and rangelands and shall include information generated during the regional, forest, and other planning processes.

(ii) *RPA Program.* The RPA Program shall consider the costs of supply and the relative values of both market and nonmarket outputs. The alternatives considered shall include national renewable resource goals and quantified objectives for resource outputs and other benefits and shall be designed to represent a range of expenditure levels sufficient to demonstrate full opportunities for management. A portion of each national objective developed in the RPA Program shall be distributed to each region and be incorporated into each regional guide. Resource objectives shall be tentatively selected for each forest planning area. In formulating the objectives for each region and forest planning area, local supply capabilities and market conditions will be considered.

(2) *Regional.* Each Regional Forester shall develop a regional guide. Regional guides shall establish regional standards and guidelines as required by § 219.9(a). Consistent with resource capabilities, regional guides shall reflect goals and objectives of the RPA Program. For planning purposes, the regional guides shall display tentative resource objectives for each Forest from the RPA Program. Regional guides shall also provide for general coordination of National Forest System, State and Private Forestry (S&PF), and Research programs. The Chief shall approve the regional guide. The Regional Forester may request adjustment of assigned regional objectives. Any adjustment shall require the approval of the Chief, Forest Service.

(3) *Forest.* Each Forest Supervisor shall develop a forest plan for administrative units of the National Forest System. One forest plan may be prepared for all lands for which a Forest Supervisor has responsibility; or separate forest plans may be prepared for each National Forest, or combination of National Forests, within the jurisdiction of a single Forest Supervisor. A single forest plan may be prepared for the entire Tongass National Forest. These forest plans shall constitute the land and resource management plans as required under sections 6 and 13 of the RPA. A range of resource objectives shall be formulated as alternatives and evaluated, including at least one alternative which responds to and incorporates the tentative RPA Program resource objectives displayed in the regional guide. Based on this evaluation, the Forest Supervisor shall recommend objectives for incorporation into the forest plan to the Regional Forester. The Regional Forester shall approve the forest plan. This approval may incorporate adjustment of the tentative RPA Program resource objectives displayed in the regional guide.

§ 219.5 Interdisciplinary approach.

(a) A team representing several disciplines shall be used for regional and forest planning to insure coordinated planning of the various resources. Through interactions among its members, the team shall integrate knowledge of the physical, biological, economic and social sciences, and the environmental design arts in the planning process. The team shall consider problems collectively, rather than separating them along disciplinary lines. Team functions include, but are not limited to—

(1) Assessing the problems and resource use and development opportunities associated with providing goods and services;

(2) Obtaining the public's views about possible decisions;

(3) Implementing the planning coordination activities within the Forest Service and with local, State and other Federal agencies;

(4) Developing a broad range of alternatives which identify the benefits and costs of land and resource management according to the planning process described in this subpart.

(5) Developing the land and resource management plan and associated environmental impact statement required pursuant to the planning process;

(6) Presenting to the responsible line officer an integrated perspective on land and resource management planning; and

(7) Establishing the standards and requirements by which planning and management activities will be monitored and evaluated.

(b) In appointing team members, the responsible line officer shall determine and consider the qualifications of each team member on the basis of the complexity of the issues and concerns to be addressed through the plan. The team shall collectively represent diverse specialized areas of professional and technical knowledge applicable to the planning area, and the team members shall have recognized relevant expertise and experience in professional, investigative, scientific, or other responsible work in specialty areas which they collectively represent. The team may consist of whatever combination of Forest Service staff and other Federal government personnel is necessary to achieve an interdisciplinary approach. The team is encouraged to consult other persons when required specialized knowledge does not exist within the team itself. In addition to technical knowledge in one or more resource specialties, members should possess other attributes which enhance the interdisciplinary process. As a minimum, these attributes should include—

(1) An ability to solve complex problems;

(2) Skills in communication and group interaction;

(3) Basic understanding of land and natural resource planning concepts, processes, and analysis techniques; and

(4) The ability to conceptualize planning problems and feasible solutions.

§ 219.6 Public participation.

(a) Because the land and resource management planning process determines how the lands of the National Forest System are to be managed, the public is encouraged to participate throughout the planning process. The intent of public participation is to—

(1) Broaden the information base upon which land and resource management planning decisions are made;

(2) Ensure that the Forest Service understands the needs, concerns, and values of the public;

(3) Inform the public of Forest Service land and resource planning activities; and

(4) Provide the public with an understanding of Forest Service programs and proposed actions.

(b) Public participation in the preparation of environmental impact statements for planning begins with the publication of a notice of intent in the Federal Register. Public involvement in the preparation of draft and final environmental impact statements shall conform to the requirements of the National Environmental Policy Act and associated implementing regulations and Forest Service Manual and Handbook guidance (hereafter, "NEPA procedures"). Public comments shall be analyzed according to NEPA procedures.

(c) Public participation activities, as deemed appropriate by the responsible line officer, shall be used early and often throughout the development of plans. Formal public participation activities will begin with a notice to the news media and other sources which includes, as appropriate, the following information:

(1) A description of the proposed planning action;

(2) A description and map of the geographic area affected;

(3) The issues expected to be discussed;

(4) The kind, extent, and method(s) of public participation to be used;

(5) The times, dates, and locations scheduled or anticipated, for public meetings;

(6) The name, title, address, and telephone number of the Forest Service official who may be contacted for further information; and

(7) The location and availability of documents relevant to planning process.

(d) Public participation activities should be appropriate to the area and people involved. Means of notification should be appropriate to the level of planning. Public participation activities may include, but are not limited to, requests for written comments, meetings, conferences, seminars, workshops, tours, and similar events designed to foster public review and comment. The Forest Service shall state the objectives of each participation activity to assure that the public understands what type of information is needed and how this information relates to the planning process.

(e) Public comments shall be considered individually and by type of group and organization to determine common areas of concern and geographic distribution. The result of this analysis should be evaluated to determine the variety and intensity of viewpoints about ongoing and proposed planning and management standards and guidelines.

(f) All scheduled public participation activities shall be documented by a summary of the principal issues discussed, comments made, and a register of participants.

(g) At least 30 days' public notice shall be given for public participation activities associated with the development of regional guides and forest plans. Any notice requesting written comments on regional planning shall allow at least 60 calendar days for response. A similar request on forest planning shall allow at least 30 calendar days for response. Draft regional guides and forest plans and environmental impact statements shall be available for public comment for a least 3 months. See also §§ 219.8(c) and 219.10(b).

(h) The responsible line officer shall attend, or provide for adequate representation at, public participation activities.

(i) Copies of approved guides and plans shall be available for public review as follows:

(1) The RPA Assessment and the RPA Program shall be available at national headquarters, The Northeastern Area State and Private Forestry Office, and all Regional offices, Research Stations, Forest Supervisors' offices, and District Rangers' offices;

(2) The regional guides shall be available at national headquarters, the issuing regional office and regional offices of contiguous regions, each Forest Supervisor's office of forests within and contiguous to the issuing region, and each District Ranger's office in the region;

(3) The forest plan shall be available at the regional office for the forest, the Forest Supervisor's office, Forest Supervisors' offices contiguous to the forest, District Rangers' offices within the forest, and at least one additional location, to be determined by the Forest Supervisor, which shall offer convenient access to the public.

These documents may be made available at other locations convenient to the public.

(j) Documents considered in the development of plans shall be available at the office where the plans were developed.

(k) Forest planning activities should be coordinated to the extent practicable with owners of lands that are intermingled with, or dependent for access upon, National Forest System lands. The results of this coordination shall be included in the environmental impact statement for the plan as part of the review required in § 219.7(c). The responsible line officer may individually notify these owners of forest planning activities where it is determined that notice provided for the general public is not likely to reach the affected landowners.

(l) Fees for reproducing requested documents shall be charged according to the Secretary of Agriculture's Fee Schedule (7 CFR Part 1, Subpart A, Appendix A).

§ 219.7 Coordination with other public planning efforts.

(a) The responsible line officer shall coordinate regional and forest planning with the equivalent and related planning efforts of other Federal agencies, State and local governments, and Indian tribes.

(b) The responsible line officer shall give notice of the preparation of a land and resource management plan, along with a general schedule of anticipated planning actions, to the official or agency so designated by the affected State (including the Commonwealth of Puerto Rico). The same notice shall be mailed to all Tribal or Alaska Native leaders whose tribal lands or treaty rights are expected to be impacted and to the heads of units of government for the counties involved. These notices shall be issued simultaneously with the publication of the notice of intent to prepare an environmental impact statement required by NEPA procedures (40 CFR 1501.7).

(c) The responsible line officer shall review the planning and land use policies of other Federal agencies, State and local governments, and Indian tribes. The results of this review shall be displayed in the environmental impact statement for the plan (40 CFR 1502.16(c), 1506.2). The review shall include—

(1) Consideration of the objectives of other Federal, State and local governments, and Indians tribes, as expressed in their plans and policies;

(2) An assessment of the interrelated impacts of these plans and policies;

(3) A determination of how each Forest Service plan should deal with the impacts identified; and,

(4) Where conflicts with Forest Service planning are identified, consideration of alternatives for their resolution.

(d) In developing land and resource management plans, the responsible line officer shall meet with the designated State official (or designee) and representatives of other Federal agencies, local governments, and Indian tribal governments at the beginning of the planning process to develop procedures for coordination. As a minimum, such conferences shall also be held after public issues and management concerns have been identified and prior to recommending the preferred alternative. Such conferences may be held in conjunction with other public participation activities, if the opportunity for government officials to participate in the planning process is not thereby reduced.

(e) In developing the forest plan, the responsible line officer shall seek input from other Federal, State and local governments, and universities to help resolve management concerns in the planning process and to identify areas where additional research is needed. This input should be included in the discussion of the research needs of the designated forest planning area.

(f) A program of monitoring and evaluation shall be conducted that includes consideration of the effects of National Forest management on land, resources, and communities adjacent to or near the National Forest being planned and the effects upon National Forest management of activities on nearby lands managed by other Federal or other government agencies or under the jurisdiction of local governments.

[47 FR 43037, Sept. 30, 1982, as amended at 48 FR 29122, June 24, 1983]

§ 219.8 Regional planning procedure.

(a) *Regional guide.* A regional guide shall be developed for each administratively designated Forest Service region. Regional guides shall reflect general coordination of National Forest System, State and Private Forestry, and Research programs. Regional guides shall provide standards and guidelines for addressing major issues and management concerns which need to be considered at the regional level to facilitate forest planning. Public participation and coordination, the current RPA Program and Assessment, and the existing forest and resource plans shall be used as sources of information in meeting this requirement. Data and information requirements established nationally will be followed in structuring and maintaining required data.

(b) *Responsibilities*—(1) *Chief, Forest Service.* The Chief shall establish agency-wide policy for regional planning and approve all regional guides.

(2) *Regional forester.* The Regional Forester has overall responsibility for preparing and implementing the regional guide and for preparing the environmental impact statement for proposed standards and guidelines in the regional guide. The Regional Forester appoints and supervises the interdisciplinary team.

(3) *Interdisciplinary team.* The team, under the direction of the Regional Forester, implements the public participation and coordination activities required by § 219.6 and § 219.7. The team shall continue to function even though membership may change and shall monitor and evaluate planning results and recommend amendments. The team shall develop a regional guide in compliance with NEPA procedures.

(c) *Public review.* A draft and final environmental impact statement shall be prepared for the proposed standards and guidelines in the regional guide according to NEPA procedures. To the extent feasible, a single process shall be used to meet planning and NEPA requirements. The draft statement shall identify a preferred alternative. Beginning on the date of publication of the notice of availability of the draft environmental impact statement in the FEDERAL REGISTER, the statement and the proposed guide shall be available for public comment for at least 3 months at convenient locations in the vicinity of the lands covered by the guide. During this period, and in accordance with the provisions in § 219.6, the Regional Forester or his designee shall publicize and hold public participation activities as deemed necessary for adequate public input.

(d) *Guide approval.* The Chief shall review the proposed guide and the final environmental impact statement and either approve or disapprove the guide.

(1) *Approval.* The Chief shall prepare a concise public record of decision which documents approval and accompanies the regional guide and the final environmental impact statement. The record or decision shall be prepared according to NEPA procedures (40 CFR 1505.2). The approved regional guide shall not become effective until at least 30 days after publication of the notice of availability of the final environmental impact statement in the FEDERAL REGISTER.

(2) *Disapproval.* The Chief shall return the regional guide and final environmental impact statement to the Regional Forester with a written statement of the reasons for disapproval. The Chief may also specify a course of action to be undertaken by the Regional Forester in order to remedy deficiencies, errors, or omissions in the regional guide or environmental impact statement.

(e) *Public appeal of approval decisions.* The provisions of 36 CFR Part 211, Subpart B apply to any administrative appeal of the Chief's decision to approve a regional guide. Decisions to disapprove a guide and other decisions made during the regional planning process prior to issuance of a record of decision approving the guide are not subject to administrative appeal.

(f) *Amendment.* The Regional Forester may amend the regional guide. The Regional Forester shall determine whether the proposed amendment would result in a significant change in the guide. If the change resulting from the proposed amendment is determined to be significant, the Regional Forester shall follow the same procedure for amendment as that required for development and approval of a regional guide. If the change resulting from the amendment is determined not to be significant for the purposes of the planning process, the Regional Forester may implement the amendment following appropriate public notification and satisfactory completion of NEPA procedures.

(g) *Planning records.* The Regional Forester shall develop and maintain planning records that document decisions and activities that result from the process of developing a regional guide and the accomplishment of legal and administrative planning requirements. These records include at least the draft environmental impact statement, final environmental impact statement, regional guide, record of decision, a work plan to guide and manage planning, the procedures used in completing each action, and the results of these actions.

§ 219.9 Regional guide content.

(a) The regional guide shall contain—

(1) A summary of the analysis of the regional management situation, including a brief description of the existing management situation and the major issues and management concerns which need to be addressed at the regional level to facilitate forest planning;

(2) A description of management direction including programs, goals, and objectives;

(3) A display of tentative resource objectives for each forest planning area from the current RPA Program;

(4) New or significantly changed regional management standards and guidelines necessary to address major regional issues and management concerns identified in paragraph (a)(1) of this section;

(5) Specific standards and guidelines for the following—

(i) Prescribing appropriate harvest cutting methods to be used within the region according to geographic areas, forest types, or other suitable classifications;

(ii) Establishing the maximum size, dispersal, and size variation of tree openings created by even-aged management, and the state of vegetation that will be reached before a cut-over area is no longer considered an opening, using factors enumerated in § 219.27(d);

(iii) Defining the management intensities and utilization standards to be used in determining harvest levels for the region;

(iv) Designating transportation corridors and associated direction for forest planning, such as management requirements for corridors, transmission lines, pipelines, and water canals. (The designation of corridors is not to preclude the granting of separate rights-of-way over, upon, under, or through the Federal lands where the authorized line officer determines that confinement to a corridor is not appropriate.) (43 U.S.C. 1763, 36 CFR 251.56); and

(v) Identifying in forest plans significant current and potential air pollution emissions from management activities and from other sources in and around the forest planning area and identifying measures needed to coordinate air quality control with appropriate air quality regulation agencies.

(6) A description of the monitoring and evaluation necessary to determine and report achievements and effects of the guide.

(7) A description of measures to achieve coordination of National Forest System, State and Private Forestry, and Research programs.

(b) Existing regional standards and guidelines that are part of the Forest Service directives system, and that are not altered or superseded in the course of complying with § 219.9(a)(4), shall remain in effect.

§ 219.10 Forest planning—general procedure.

(a) *Responsibilities*—(1) *Regional Forester.* The Regional Forester shall establish regional policy for forest planning and approve all forest plans in the region.

(2) *Forest Supervisor.* The Forest Supervisor has overall responsibility for the preparation and implementation of the forest plan and preparation of the environmental impact statement for the forest plan. The Forest Supervisor appoints and supervises the interdisciplinary team.

(3) *Interdisciplinary team.* The team, under the direction of the Forest Supervisor, implements the public participation and coordination activities required by § 219.6 and § 219.7. The team shall continue to function even though membership may change and shall monitor and evaluate planning results and recommend revisions and amendments. The interdisciplinary team shall develop a forest plan and environmental impact statement using the process established in § 219.12 and paragraph (b) below.

(b) *Public review of plan and environmental impact statement.* A draft and final environmental impact statement shall be prepared for the proposed plan according to NEPA procedures. The draft environmental impact statement shall identify a preferred alternative. To comply with 16 U.S.C. 1604(d), the draft environmental impact statement and proposed plan shall be available for public comment for at least 3 months, at convenient locations in the vicinity of the lands covered by the plan, beginning on the date of the publication of the notice of availability in the FEDERAL REGISTER. During this period, and in accordance with the provisions in § 219.6, the Forest Supervisor shall publicize and hold public participation activities as deemed necessary to obtain adequate public input.

(c) *Plan approval.* The Regional Forester shall review the proposed plan and the final environmental impact statement and either approve or disapprove the plan.

(1) *Approval.* The Regional Forester shall prepare a concise public record of decision which documents approval and accompanies the plan and final environmental impact statement. The record of decision shall be prepared according to NEPA procedures (40 CFR 1505.2). The approved plan shall not become effective until at least 30 days after publication of the notice of availability of the final environmental impact statement in the FEDERAL REGISTER, to comply with 16 U.S.C. 1604(d) and 1604(j).

(2) *Disapproval.* The Regional Forester shall return the plan and final environmental impact statement to

the Forest Supervisor with a written statement of the reasons for disapproval. The Regional Forester may also specify a course of action to be undertaken by the Forest Supervisor in order to remedy deficiencies, errors, or omissions in the plan or environmental impact statement.

(d) *Public appeal of approval decision.* The provisions of 36 CFR Part 211, Subpart B apply to any administrative appeal of the Regional Forester's decision to approve a forest plan. Decisions to disapprove a plan and other decisions made during the forest planning process prior to the issuance of a record of decision approving the plan are not subject to administrative appeal.

(e) *Plan implementation.* As soon as practicable after approval of the plan, the Forest Supervisor shall ensure that, subject to valid existing rights, all outstanding and future permits, contracts, cooperative agreements, and other instruments for occupancy and use of affected lands are consistent with the plan. Subsequent administrative activities affecting such lands, including budget proposals, shall be based on the plan. The Forest Supervisor may change proposed implementation schedules to reflect differences between proposed annual budgets and appropriated funds. Such scheduled changes shall be considered an amendment to the forest plan, but shall not be considered a significant amendment, or require the preparation of an environmental impact statement, unless the changes significantly alter the long-term relationship between levels of multiple-use goods and services projected under planned budget proposals as compared to those projected under actual appropriations.

(f) *Amendment.* The Forest Supervisor may amend the forest plan. Based on an analysis of the objectives, guidelines, and other contents of the forest plan, the Forest Supervisor shall determine whether a proposed amendment would result in a significant change in the plan. If the change resulting from the proposed amendment is determined to be significant, the Forest Supervisor shall follow the same procedure as that required for development and approval of a forest plan. If the change resulting from the amendment is determined not to be significant for the purposes of the planning process, the Forest Supervisor may implement the amendment following appropriate public notification and satisfactory completion of NEPA procedures.

(g) *Revision.* A forest plan shall ordinarily be revised on a 10-year cycle or at least every 15 years. It also may be revised whenever the Forest Supervisor determines that conditions or demands in the area covered by the plan have changed significantly or when changes in RPA policies, goals, or objectives would have a significant effect on forest level programs. In the monitoring and evaluation process, the interdisciplinary team may recommend a revision of the forest plan at any time. Revisions are not effective until considered and approved in accordance with the requirements for the development and approval of a forest plan. The Forest Supervisor shall review the conditions on the land covered by the plan at least every 5 years to determine whether conditions or demands of the public have change significantly.

(h) *Planning records.* The Forest Supervisor and interdisciplinary team shall develop and maintain planning records that document the decisions and activities that result from the process of developing a forest plan. Records that support analytical conclusions made and alternatives considered by the team and approved by the Forest Supervisor throughout the planning process shall be maintained. Such supporting records provide the basis for the development of the forest plan and associated documents required by NEPA procedures.

§ 219.11 Forest plan content.

The forest plan shall contain the following:

(a) A brief summary of the analysis of the management situation, including demand and supply conditions for resource commodities and services, production potentials, and use and development opportunities;

(b) Forest multiple-use goals and objectives that include a description of the desired future condition of the forest or grassland and an identification of the quantities of goods and services that are expected to be produced or provided during the RPA planning periods;

(c) Multiple-use prescriptions and associated standards and guidelines for each management area including proposed and probable management practices such as the planned timber sale program; and

(d) Monitoring and evaluation requirements that will provide a basis for a periodic determination and evaluation of the effects of management practices.

§ 219.12 Forest planning—process.

(a) *General requirements.* The preparation, revision, or significant amendment of a forest plan shall comply with the requirements established in this section. The planning process includes at least those actions set forth in paragraphs (b) through (k) of the section. Some actions may occur simultaneously, and it may be necessary to repeat an action as additional information becomes available. The environmental impact statement for each forest plan shall be prepared according to NEPA procedures. To the extent feasible, a single process shall be used to meet planning and NEPA requirements.

(b) *Identification of purpose and need.* The interdisciplinary team shall identify and evaluate public issues, management concerns, and resource use and development opportunities, including those identified throughout the planning process during public participation activities and coordination with other Federal agencies, State and local governments, and Indian tribes. The Forest Supervisor shall determine the major public issues, management concerns, and resource use and development opportunities to be addressed in the planning process.

(c) *Planning criteria.* Criteria shall be prepared to guide the planning process. Criteria apply to collection and use of inventory data and information, analysis of the management situation, and the design, formulation, and evaluation of alternatives. Criteria designed to achieve the objective of maximizing net public benefits shall be included. Specific criteria may be derived from—

(1) Laws, Executive Orders, regulations, and agency policy as set forth in the Forest Service Manual;

(2) Goals and objectives in the RPA Program and regional guides;

(3) Recommendations and assumptions developed from public issues, management concerns, and resource use and development opportunities;

(4) The plans and programs of other Federal agencies, State and local governments, and Indian tribes;

(5) Ecological, technical, and economic factors; and

(6) The resource integration and management requirements in §§ 219.13 through 219.27.

(d) *Inventory data and information collection.* Each Forest Supervisor shall obtain and keep current inventory data appropriate for planning and managing the resources under his or her administrative jurisdiction. The Supervisor will assure that the interdisciplinary team has access to the best available data. This may require that special inventories or studies be prepared. The interdisciplinary team shall collect, assemble, and use data, maps, graphic material, and explanatory aids, of a kind, character, and quality, and to the detail appropriate for the management decisions to be made. Data and information needs may vary as planning problems develop from identification of public issues, management concerns, and resource use and development opportunities. Data shall be stored for ready retrieval and comparison and periodically shall be evaluated for accuracy and effectiveness. The interdisciplinary team will use common data definitions and standards established by the Chief of the Forest Service to assure uniformity of information between all planning levels. As information is recorded, it shall be applied in any subsequent planning process. Information developed according to common data definitions and standards shall be used in the preparation of the 1990, and subsequent RPA Assessments and RPA Programs.

(e) *Analysis of the management situation.* The analysis of the management situation is a determination of the ability of the planning area covered by the forest plan to supply goods and services in response to society's demands. The primary purpose of this analysis is to provide a basis for formulating a broad range of reasonable alternatives. The analysis may examine the capability of the unit to supply outputs both with and without legal and other requirements. As a minimum, the analysis of the management situation shall include the following:

(1) Benchmark analyses to define the range within which alternatives can be constructed. Budgets shall not be a constraint. The following benchmark analyses shall be consistent with the minimum applicable management requirements of § 219.27 and shall define at least—

(i) The minimum level of management which would be needed to maintain and protect the unit as part of the National Forest System together with associated costs and benefits;

(ii) The maximum physical and biological production potentials of significant individual goods and services together with associated costs and benefits;

(iii) Monetary benchmarks which estimate the maximum present net value of those resources having an established market value or an assigned value;

(A) For forest planning areas with major resource outputs that have an established market price, monetary benchmarks shall include an estimate of the mix of resource uses, combined with a schedule of outputs and costs, which will maximize the present net value of those major outputs that have an established market price;

(B) For all forest planning areas, monetary benchmarks shall include an estimate of the mix of resource uses, combined with a schedule of outputs and costs, which will maximize the present net value of those major outputs that have an established market price or are assigned a monetary value;

(C) For forest planning areas with a significant timber resource, estimates for paragraphs (e)(1)(iii) (A) and (B) of this section shall be developed both with and without meeting the requirements for compliance with a base sale schedule of timber harvest, as described in § 219.16(a)(1), and with and without scheduling the harvest of even-aged stands generally at or beyond culmination of mean annual increment of growth, as described in § 219.16(a)(2)(iii).

(D) Estimates for paragraphs (e)(1)(iii) (A) and (B) of this section shall be developed both with and without other constraints when needed to address major public issues, management concerns, or resource opportunities identified during the planning process.

(2) The current level of goods and services provided by the unit and the most likely amount of goods and services expected to be provided in the future if current management direction continues; this will be the same analysis as that required by § 219.12(f)(5).

(3) Projections of demand using best available techniques, with both price and nonprice information. To the extent practical, demand will be assessed as price-quantity relationships.

(4) A determination of the potential to resolve public issues and management concerns.

(5) Based on consideration of data and findings developed in paragraphs (e)(1)-(4), a determination of the need to establish or change management direction.

(f) *Formulation of alternatives.* The interdisciplinary team shall formulate a broad range of reasonable alternatives according to NEPA procedures. The primary goal in formulating alternatives, besides complying with NEPA procedures, is to provide an adequate basis for identifying the alternative that comes nearest to maximizing net public benefits, consistent with the resource integration and management requirements of §§ 219.13 through 219.27.

(1) Alternatives shall be distributed between the minimum resource potential and the maximum resource potential to reflect to the extent practicable the full range of major commodity and environmental resource uses and values that could be produced from the forest. Alternatives shall reflect a

range of resource outputs and expenditure levels.

(2) Alternatives shall be formulated to facilitate analysis of opportunity costs and of resource use and environmental trade-offs among alternatives and between benchmarks and alternatives.

(3) Alternatives shall be formulated to facilitate evaluation of the effects on present net value, benefits, and costs of achieving various outputs and values that are not assigned monetary values, but that are provided at specified levels.

(4) Alternatives shall provide different ways to address and respond to the major public issues, management concerns, and resource opportunities identified during the planning process.

(5) Reasonable alternatives which may require a change in existing law or policy to implement shall be formulated if necessary to address a major public issue, management concern, or resource opportunity identified during the planning process (40 CFR 1501.7, 1502.14(c)).

(6) At least one alternative shall be developed which responds to and incorporates the RPA Program tentative resource objectives for each forest displayed in the regional guide.

(7) At least one alternative shall reflect the current level of goods and services provided by the unit and the most likely amount of goods and services expected to be provided in the future if current management direction continues. Pursuant to NEPA procedures, this alternative shall be deemed the "no action" alternative.

(8) Each alternative shall represent to the extent practicable the most cost efficient combination of management prescriptions examined that can meet the objectives established in the alternative.

(9) Each alternative shall state at least—

(i) The condition and uses that will result from long-term application of the alternative;

(ii) The goods and services to be produced, the timing and flow of these resource outputs together with associated costs and benefits;

(iii) Resource management standards and guidelines; and

(iv) The purposes of the management direction proposed.

(g) *Estimated effects of alternatives.* The physical, biological, economic, and social effects of implementing each alternative considered in detail shall be estimated and compared according to NEPA procedures. These effects include those described in NEPA procedures (40 CFR 1502.14 and 1502.16) and at least the following:

(1) The expected outputs for the planning periods, including appropriate marketable goods and services, as well as nonmarket items, such as recreation and wilderness use, wildlife and fish, protection and enhancement of soil, water, and air, and preservation of aesthetic and cultural resource values;

(2) The relationship of expected outputs to the RPA Program tentative resource objectives for the forest displayed in the current regional guide;

(3) Direct and indirect benefits and costs, analyzed in sufficient detail to estimate—

(i) the expected real-dollar costs (discounted when appropriate), including investment, administrative, and operating costs of the agency and all other public and private costs required to manage the forest up to the point where the outputs are valued and the environmental consequences are realized;

(ii) the expected real-dollar value (discounted when appropriate) of all outputs attributable to each alternative to the extent that monetary values can be assigned to nonmarket goods and services, using quantitative and qualitative criteria when monetary values may not reasonably be assigned;

(iii) the economic effects of alternatives, including impacts on present net value, total receipts to the Federal Government, direct benefits to users that are not measured in receipts to the Federal Government, receipt shares to State and local governments, income, and employment in affected areas; and

(iv) the monetary opportunity costs (changes in present net value) associated with those management standards and resource outputs in each alternative that were not assigned monetary values but were provided at specified levels, compared with the maximum present net value benchmarks developed in § 219.12(e)(1)(iii).

(4) The significant resource tradeoffs and opportunity costs associated with achieving alternative resource objectives.

(h) *Evaluation of alternatives:* Using planning criteria, the interdisciplinary team shall evaluate the significant physical, biological, economic, and social effects of each management alternative that is considered in detail. The evaluation shall include a comparative analysis of the aggregate effects of the management alternatives and shall compare present net value, social and economic impacts, outputs of goods and services, and overall protection and enhancement of environmental resources.

(i) *Preferred alternative recommendation.* The Forest Supervisor shall review the interdisciplinary team's evaluation and shall recommend to the Regional Forester a preferred alternative to be identified in the draft environmental impact statement and displayed as the proposed plan.

(j) *Plan approval.* The Regional Forester shall review the proposed plan and final environmental impact statement and either approve or disapprove the plan in accordance with § 219.10(c). The record of decision for approval of a plan shall include, in addition to the requirements of NEPA procedures (40 CFR 1505.2), a summarized comparison of the selected alternative with:

(1) Any other alternative considered which is environmentally preferable to the selected alternative; and

(2) Any other alternative considered which comes nearer to maximizing present net value.

(k) *Monitoring and evaluation.* At intervals established in the plan, implementation shall be evaluated on a sample basis to determine how well objectives have been met and how closely management standards and guidelines have been applied. Based upon this evaluation, the interdisciplinary team shall recommend to the Forest Supervisor such changes in management direction, revisions, or amendments to the forest plan as are deemed necessary. Monitoring requirements identified in the forest plan shall provide for—

(1) A quantitative estimate of performance comparing outputs and services with those projected by the forest plan;

(2) Documentation of the measured prescriptions and effects, including significant changes in productivity of the land; and

(3) Documentation of costs associated with carrying out the planned management prescriptions as compared with costs estimated in the forest plan.

(4) A description of the following monitoring activities:

(i) The actions, effects, or resources to be measured, and the frequency of measurements;

(ii) Expected precision and reliability of the monitoring process; and

(iii) The time when evaluation will be reported.

(5) A determination of compliance with the following standards:

(i) Lands are adequately restocked as specified in the forest plan;

(ii) Lands identified as not suited for timber production are examined at least every 10 years to determine if they have become suited; and that, if determined suited, such lands are returned to timber production;

(iii) Maximum size limits for harvest areas are evaluated to determine whether such size limits should be continued; and

(iv) Destructive insects and disease organisms do not increase to potentially damaging levels following management activities.

§ 219.13 Forest planning—resource integration requirements.

The minimum requirements for integrating individual forest resource planning into the forest plan are established in §§ 219.14 through 219.26 of this subpart. For the purposes of meeting the requirements of § 219.12(c), additional planning criteria may be found in the guidelines for managing specific resources set forth in the Forest Service Manual and Handbooks.

§ 219.14 Timber resource land suitability.

During the forest planning process, lands which are not suited for timber production shall be identified in accordance with the criteria in paragraphs (a) through (d) of this section.

(a) During the analysis of the management situation, data on all National Forest System lands within the planning area shall be reviewed, and those lands within any one of the categories described in paragraphs (a) (1) through (4) of this section shall be identified as not suited for timber production—

(1) The land is not forest land as defined in § 219.3.

(2) Technology is not available to ensure timber production from the land without irreversible resource damage to soils productivity, or watershed conditions.

(3) There is not reasonable assurance that such lands can be adequately restocked as provided in § 219.27(c)(3).

(4) The land has been withdrawn from timber production by an Act of Congress, the Secretary of Agriculture or the Chief of the Forest Service.

(b) Forest lands other than those that have been identified as not suited for timber production in paragraph (a) of this section shall be further reviewed and assessed prior to formulation of alternatives to determine the costs and benefits for a range of management intensities for timber production. For the purpose of analysis, the planning area shall be stratified into categories of land with similar management costs and returns. The stratification should consider appropriate factors that influence the costs and returns such as physical and biological conditions of the site and transportation requirements. This analysis shall identify the management intensity for timber production for each category of land which results in the largest excess of discounted benefits less discounted costs and shall compare the direct costs of growing and harvesting trees, including capital expenditures required for timber production, to the anticipated receipts to the government, in accordance with § 219.12 and paragraphs (b)(1) through (b)(3) of this section.

(1) Direct benefits are expressed as expected gross receipts to the government. Such receipts shall be based upon expected stumpage prices and payments-in-kind from timber harvest considering future supply and demand situation for timber and upon timber production goals of the regional guide.

(2) Direct costs include the anticipated investments, maintenance, operating, management, and planning costs attributable to timber production activities, including mitigation measures necessitated by the impacts of timber production.

(3) In addition to long-term yield, the financial analysis must consider costs and returns of managing the existing timber inventory.

(c) During formulation and evaluation of each alternative as required in § 219.12 (f) and (g), combinations of resource management prescriptions shall be defined to meet management objectives for the various multiple uses including outdoor recreation, timber, watershed, range, wildlife and fish, and wilderness. The formulation and evaluation of each alternative shall consider the costs and benefits of alternative management intensities for timber production as identified pursuant to paragraph (b) of this section in accordance with § 219.12(f). Lands shall be tentatively identified as not appropriate for timber production to meet objectives of the alternative being considered if—

(1) Based upon a consideration of multiple-use objectives for the alternative, the land is proposed for resource uses that preclude timber production, such as wilderness;

(2) Other management objectives for the alternative limit timber production activities to the point where management requirements set forth in § 219.27 cannot be met; or

(3) The lands are not cost-efficient, over the planning horizon, in meeting forest objectives, which include timber production.

(d) Lands identified as not suited for timber production in paragraph (a) of this section and lands tentatively identified as not appropriate for timber production in paragraph (c) of this section shall be designated as not suited for timber production in the preferred alternative. Designation in the plan of lands not suited for timber production shall be reviewed at least every 10 years. Such lands may be reviewed and redesignated as suited for timber production due to changed conditions at any time, according to the criteria in paragraphs (a) and (c) of this section, and according to the procedures for amendment or revision of the forest plan in § 219.10 (f) and (g).

§ 219.15 Vegetation management practices.

When vegetation is altered by management, the methods, timing, and intensity of the practices determine the level of benefits that can be obtained from the affected resources. The vegetation management practices chosen for each vegetation type and circumstance shall be defined in the forest plan with applicable standards and guidelines and the reasons for the choices. Where more than one vegetation management practice will be used in a vegetation type, the conditions under which each will be used shall be based upon thorough reviews of technical and scientific literature and practical experience, with appropriate evaluation of this knowledge for relevance to the specific vegetation and site conditions. On National Forest System land, the vegetation management practice chosen shall comply with the management requirements in § 219.27(b).

§ 219.16 Timber resource sale schedule.

In a forest plan, the selected forest management alternative includes a sale schedule which provides the allowable sale quantity. The sale schedule of each alternative, including those which depart from base sale schedules, shall be formulated in compliance with § 219.12(f) and paragraphs (a) and (b) of this section.

(a) Alternatives shall be formulated that include determinations of the quantity of the timber that may be sold during each decade. These quantity determinations shall be based on the principle of sustained yield and shall meet the management requirements in § 219.27. For each alternative, the determination shall include a calculation of the long-term sustained-yield capacity and the base sale schedule and, when appropriate, a calculation of timber sale alternatives that may depart from the base sale schedule as provided in paragraphs (a)(1) through (a)(3) of this section.

(1) For the base sale schedules, the planned sale for any future decade shall be equal to, or greater than, the planned sale for the preceding decade, provided that the planned sale is not greater than the long-term sustained-yield capacity consistent with the management objectives of the alternative.

(2) The determinations of the appropriate long-term sustained-yield capacities, base sale schedules, and departure alternatives to the base sale schedules shall be made on the basis of the guidelines which follow:

(i) For the long-term sustained-yield capacities and the base sale schedules, assume intensities of management and degree of timber utilization consistent with the goals, assumptions, and requirements contained in, or used in, the preparation of the current RPA Program and regional guide. For the base sale schedule, the management and utilization assumptions shall reflect the projected changes in practices for the four decades contained in, or used in, the preparation of the current RPA Program and regional guide. Beyond the fourth decade, the assumptions shall reflect those projected for the fourth decade of the current RPA Program, unless there is a basis for a different assumption;

(ii) For alternatives with sale schedules which depart from the corresponding base sale schedule, assume an appropriate management intensity;

(iii) In accordance with the established standards, assure that all even-aged stands scheduled to be harvested during the planning period will generally have reached the culmination of mean annual increment of growth. Mean annual increment shall be based on expected growth, according to management intensities and utilization standards assumed in paragraphs (a)(2) (i) and (ii) of this section and on forest type and site quality. Mean annual increment shall be expressed in cubic measure. Alternatives which incorporate exceptions to these standards shall be evaluated if it is reasonable to expect that overall multiple use objectives would be better attained. Alternatives which incorporate exceptions to these standards are permitted for the use of sound silvicultural practices, such as thinning or other stand improvement measures; for salvage or sanitation harvesting of timber stands which are substantially damaged by fire, windthrow, or other catastrophe, or which are in imminent danger from insect or disease attack; for cutting for experimental and research purposes; or for removing particular species of trees, after consideration has been given to the multiple uses of the area being planned and after completion of the public participation process applicable to the preparation of a forest plan; and

(iv) Each sale schedule shall provide for a forest structure that will enable perpetual timber harvest which meets the principle of sustained-yield and multiple-use objectives of the alternative.

(3) Alternatives with sale schedules which depart from the principles of paragraph (a)(1) of this section and which will lead to better attaining the overall objectives of multiple-use management shall be evaluated when any of the following conditions are indicated:

(i) None of the other alternatives considered provides a sale schedule that achieves the assigned goals of the RPA Program as provided in § 219.4(b);

(ii) High mortality losses from any cause can be significantly reduced or prevented or forest age-class distribution can be improved, thereby facilitating future sustained-yield management; or

(iii) Implementation of the corresponding base sale schedule would cause a substantial adverse impact upon a community in the economic area in which the forest is located.

(iv) It is reasonable to expect that overall multiple-use objectives would otherwise be better attained.

(b) The sale schedule of the management alternative selected in accordance with § 219.12 provides the allowable sale quantity for the first plan period.

§ 219.17 Evaluation of roadless areas.

(a) Unless otherwise provided by law, roadless areas within the National Forest System shall be evaluated and considered for recommendation as potential wilderness areas during the forest planning process, as provided in paragraphs (a) (1) and (2) of this section.

(1) During analysis of the management situation, the following areas shall be subject to evaluation:

(i) Roadless areas including those previously inventoried in the second roadless area review and evaluation (RARE II), in a unit plan, or in a forest plan, which remain essentially roadless and undeveloped, and which have not yet been designated as wilderness or for nowilderness uses by law. In addition, other essentially roadless areas may be subject to evaluation at the discretion of the Forest Supervisor.

(ii) Areas contiguous to existing wilderness, primitive areas, or administratively proposed wildernesses, regardless of which agency has jurisdiction for the wilderness or proposed wilderness;

(iii) Areas that are contiguous to roadless and undeveloped areas in other Federal ownership that have identified wilderness potential; and

(iv) Areas designated by Congress for wilderness study, administrative proposals pending before Congress, and other legislative proposals pending which have been endorsed by the President.

(2) For each area subject to evaluation under paragraph (a)(1) of this section, the determination of the significant resource issues, which in turn affect the detail and scope of evaluation required by the Forest Service, shall be developed with public participation. As a minimum, the evaluation shall include consideration of:

(i) The values of the area as wilderness;

(ii) The values foregone and effects on management of adjacent lands as a consequence of wilderness designation;

(iii) Feasibility of management as wilderness, in respect to size, nonconforming use, land ownership patterns, and existing contractual agreements or statutory rights;

(iv) Proximity to other designated wilderness and relative contribution to the National Wilderness Preservation System; and

(v) The anticipated long-term changes in plant and animal species diversity, including the diversity of natural plant and animal communities of the forest planning area and the effects of such changes on the values for which wilderness areas were created.

[47 FR 43037, Sept. 30, 1982, as amended at 48 FR 40383, Sept. 7, 1983]

§ 219.18 Wilderness management.

Forest planning shall provide direction for the management of designated wilderness and primitive areas in accordance with the provisions of 36 CFR Part 293. In particular, plans shall—

(a) Provide for limiting and distributing visitor use of specific areas in accord with periodic estimates of the maximum levels of use that allow natural processes to operate freely and that do not impair the values for which wilderness areas were created; and

(b) Evaluate the extent to which wildfire, insect, and disease control measures may be desirable for protection of either the wilderness or adjacent areas and provide for such measures when appropriate.

§ 219.19 Fish and wildlife resource.

Fish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area. For planning purposes, a viable population shall be regarded as one which has the estimated numbers and distribution of reproductive individuals to insure its continued existence is well distributed in the planning area. In order to insure that viable populations will be maintained, habitat must be provided to support, at least, a minimum number of reproductive individuals and that habitat must be well distributed so that those individuals can interact with others in the planning area.

(a) Each alternative shall establish objectives for the maintenance and improvement of habitat for management indicator species selected under paragraph (g)(1) of this section, to the degree consistent with overall multiple use objectives of the alternative. To meet this goal, management planning for the fish and wildlife resource shall meet the requirements set forth in paragraphs (a)(1) through (a)(7) of this section.

(1) In order to estimate the effects of each alternative on fish and wildlife populations, certain vertebrate and/or invertebrate species present in the area shall be identified and selected as management indicator species and the reasons for their selection will be stated. These species shall be selected because their population changes are believed to indicate the effects of management activities. In the selection of management indicator species, the following categories shall be represented where appropriate: Endangered and threatened plant and animal species identified on State and Federal lists for the planning area; species with special habitat needs that may be influenced significantly by planned management programs; species commonly hunted, fished, or trapped; non-game species of special interest; and additional plant or animal species selected because their population changes are believed to indicate the effects of management activities on other species of selected major biological communities or on water quality. On the basis of available scientific information, the interdisciplinary team shall estimate the effects of changes in vegetation type, timber age classes, community composition, rotation age, and year-long suitability of habitat related to mobility of management indicator species. Where appropriate, measures to mitigate adverse effects shall be prescribed.

(2) Planning alternatives shall be stated and evaluated in terms of both amount and quality of habitat and of animal population trends of the management indicator species.

(3) Biologists from State fish and wildlife agencies and other Federal agencies shall be consulted in order to coordinate planning for fish and wildlife, including opportunities for the reintroduction of extirpated species.

(4) Access and dispersal problems of hunting, fishing, and other visitor uses shall be considered.

(5) The effects of pest and fire management on fish and wildlife populations shall be considered.

(6) Population trends of the management indicator species will be monitored and relationships to habitat changes determined. This monitoring will be done in cooperation with State fish and wildlife agencies, to the extent practicable.

(7) Habitat determined to be critical for threatened and endangered species shall be identified, and measures shall be prescribed to prevent the destruction or adverse modification of such habitat. Objectives shall be determined for threatened and endangered species that shall provide for, where possible, their removal from listing as threatened and endangered species through appropriate conservation measures, including the designation of special areas to meet the protection and management needs of such species.

§ 219.20 Grazing resource.

In forest planning, the suitability and potential capability of National Forest System lands for producing forage for grazing animals and for providing habitat for management indicator species shall be determined as provided in paragraphs (a) and (b) of this section. Lands so identified shall be managed in accordance with direction established in forest plans.

(a) Lands suitable for grazing and browsing shall be identified and their condition and trend shall be determined. The present and potential supply of forage for livestock, wild and free-roaming horses and burros, and the capability of these lands to produce suitable food and cover for selected wildlife species shall be estimated. The use of forage by grazing and browsing animals will be estimated. Lands in less than satisfactory condition shall be identified and appropriate action planned for their restoration.

(b) Alternative range management prescriptions shall consider grazing systems and the facilities necessary to implement them; land treatment and vegetation manipulation practices; and evaluation of pest problems; possible conflict or beneficial interactions among livestock, wild free-roaming horses and burros and wild animal populations, and methods of regulating these; direction for rehabilitation of ranges in unsatisfactory condition; and comparative cost efficiency of the prescriptions.

§ 219.21 Recreation resource.

To the degree consistent with needs and demands for all major resources, a broad spectrum of forest and rangeland related outdoor recreation opportunities shall be provided for in each alternative. Planning activities to achieve this shall be in accordance with national and regional direction and procedural requirements of paragraphs (a) through (g) of this section.

(a) Forest planning shall identify—

(1) The physical and biological characteristics that make land suitable for recreation opportunities;

(2) The recreational preferences of user groups and the settings needed to provide quality recreation opportunities; and

(3) Recreation opportunities on the National Forest System lands.

(b) The supply of developed recreational facilities in the area of National Forest influence shall be appraised for adequacy to meet present and future demands.

(c) Planning alternatives shall include consideration of establishment of physical facilities, regulation of use, and recreation opportunities responsive to current and anticipated user demands.

(d) In formulation and analysis of alternatives as specified in § 219.12 (f) and (g), interactions among recreation opportunities and other multiple uses shall be examined. This examination shall consider the impacts of the proposed recreation activities on other uses and values and the impacts of other uses and activities associated with them on recreation opportunities, activities, and quality of experience.

(e) Formulation and evaluation of alternatives under paragraphs (c) and (d) of this section shall be coordinated to the extent feasible with present and proposed recreation activities of local and State land use or outdoor recreation plans, particularly the State Comprehensive Outdoor Recreation Plan, and recreation opportunities already present and available on other public and private lands, with the aim of reducing duplication in meeting recreation demands.

(f) The visual resource shall be inventoried and evaluated as an integrated part of evaluating alternatives in the forest planning process, addressing both the landscape's visual attractiveness and the public's visual expectation. Management prescriptions for definitive land areas of the forest shall include visual quality objectives.

(g) Off-road vehicle use shall be planned and implemented to protect land and other resources, promote public safety, and minimize conflicts with other uses of the National Forest System lands. Forest planning shall evaluate the potential effects of vehicle use off roads and, on the basis of the requirements of 36 CFR Part 295 of this chapter, classify areas and trails of National Forest System lands as to whether or not off-road vehicle use may be permitted.

§ 219.22 Mineral resource.

Mineral exploration and development in the planning area shall be considered in the management of renewable resources. The following shall be recognized to the extent practicable in forest planning:

(a) Active mines within the area of land covered by the forest plan;

(b) Outstanding or reserved mineral rights;

(c) The probable occurrence of various minerals, including locatable, leasable, and common variety;

(d) The potential for future mineral development and potential need for withdrawal of areas from development;

(e) Access requirements for mineral exploration and development; and

(f) The probable effect of renewable resource prescriptions and management direction on mineral resources and activities, including exploration and development.

§ 219.23 Water and soil resource.

Forest planning shall provide for—

(a) General estimates of current water uses, both consumptive and nonconsumptive, including instream flow requirements within the area of land covered by the forest plan;

(b) Identification of significant existing impoundments, transmission facilities, wells, and other man-made developments on the area of land covered by the forest plan;

(c) Estimation of the probable occurrence of various levels of water volumes, including extreme events which would have a major impact on the planning area;

(d) Compliance with requirements of the Clean Water Act, the Safe Drinking Water Act, and all substantive and procedural requirements of Federal, State, and local governmental bodies with respect to the provision of public water systems and the disposal of waste water;

(e) Evaluation of existing or potential watershed conditions that will influence soil productivity, water yield, water pollution, or hazardous events; and

(f) Adoption of measures, as directed in applicable Executive orders, to minimize risk of flood loss, to restore and preserve floodplain values, and to protect wetlands.

§ 219.24 Cultural and historic resources.

Forest planning shall provide for the identification, protection, interpretation, and management of significant cultural resources on National Forest System lands. Planning of the resource shall be governed by the requirements of Federal laws pertaining to historic preservation, and guided by paragraphs (a)(1) through (a)(3) of this section.

(a) Forest planning shall—

(1) Provide an overview of known data relevant to history, ethnography, and prehistory of the area under consideration, including known cultural resource sites;

(2) Identify areas requiring more intensive inventory;

(3) Provide for evaluation and identification of appropriate sites for the National Register of Historic Places;

(4) Provide for establishing measures for the protection of significant cultural resources from vandalism and other human depredation, and natural destruction;

(5) Identify the need for maintenance of historic sites on, or eligible for inclusion in, the National Register of Historic Places; and

(6) Identify opportunities for interpretation of cultural resources for the education and enjoyment of the American public.

(b) In the formulation and analysis of alternatives, interactions among cultural resources and other multiple uses shall be examined. This examination shall consider impacts of the management of cultural resources on other uses and activities and impacts of other uses and activities on cultural resource management.

(c) Formulation and evaluation of alternatives shall be coordinated to the extent feasible with the State cultural resource plan and planning activities of the State Historic Preservation Office and State Archaeologist and with other State and Federal agencies.

§ 219.25 Research natural areas.

Forest planning shall provide for the establishment of Research Natural Areas (RNA's). Planning shall make provision for the identification of examples of important forest, shrubland, grassland, alpine, aquatic, and geologic types that have special or unique characteristics of scientific interest and importance and that are needed to complete the national network of RNA's. Biotic, aquatic, and geologic types needed for the network shall be identified using a list provided by the Chief of the Forest Service. Authority to establish RNA's is delegated to the Chief at 7 CFR 2.60(a) and 36 CFR 251.23. Recommendations for establishment of areas shall be made to the Chief through the planning process.

§ 219.26 Diversity.

Forest planning shall provide for diversity of plant and animal communities and tree species consistent with the overall multiple-use objectives of the planning area. Such diversity shall be considered throughout the planning process. Inventories shall include quantitative data making possible the evaluation of diversity in terms of its prior and present condition. For each planning alternative, the interdisciplinary team shall consider how diversity will be affected by various mixes of resource outputs and uses, including proposed management practices. (Refer to § 219.27(g).)

§ 219.27 Management requirements.

The minimum specific management requirements to be met in accomplishing goals and objectives for the National Forest System are set forth in this section. These requirements guide the development, analysis, approval, implementation, monitoring and evaluation of forest plans.

(a) *Resource protection.* All management prescriptions shall—

(1) Conserve soil and water resources and not allow significant or permanent impairment of the productivity of the land;

(2) Consistent with the relative resource values involved, minimize serious or long-lasting hazards from flood, wind, wildfire, erosion, or other natural physical forces unless these are specifically excepted, as in wilderness;

(3) Consistent with the relative resource values involved, prevent or reduce serious, long lasting hazards and damage from pest organisms, utilizing principles of integrated pest management. Under this approach all aspects of a pest-host system should be weighed to determine situation-specific prescriptions which may utilize a combination of techniques including, as appropriate, natural controls, harvesting, use of resistant species, maintenance of diversity, removal of damaged trees, and judicious use of pesticides. The basic principle in the choice of strategy is that, in the long term, it be ecologically acceptable and compatible with the forest ecosystem and the multiple use objectives of the plan;

(4) Protect streams, streambanks, shorelines, lakes, wetlands, and other bodies of water as provided under paragraphs (d) and (e) of this section;

(5) Provide for and maintain diversity of plant and animal communities to meet overall multiple-use objectives,

as provided in paragraph (g) of this section;

(6) Provide for adequate fish and wildlife habitat to maintain viable populations of existing native vertebrate species and provide that habitat for species chosen under § 219.19 is maintained and improved to the degree consistent with multiple-use objectives established in the plan;

(7) Be assessed prior to project implementation for potential physical, biological, aesthetic, cultural, engineering, and economic impacts and for consistency with multiple uses planned for the general area;

(8) Include measures for preventing the destruction or adverse modification of critical habitat for threatened and endangered species;

(9) Provide that existing significant transportation and utility corridors and other significant right-of-ways that are capable and likely to be needed to accommodate the facility or use from an additional compatible right-of-way be designated as a right-of-way corridor. Subsequent right-of-way grants will, to the extent practicable, and as determined by the responsible line officer, use designated corridors;

(10) Ensure that any roads constructed through contracts, permits, or leases are designed according to standards appropriate to the planned uses, considering safety, cost of transportation, and effects upon lands and resources;

(11) Provide that all roads are planned and designed to re-establish vegetative cover on the disturbed area within a reasonable period of time, not to exceed 10 years after the termination of a contract, lease or permit, unless the road is determined necessary as a permanent addition to the National Forest Transportation System; and

(12) Be consistent with maintaining air quality at a level that is adequate for the protection and use of National Forest System resources and that meets or exceeds applicable Federal, State and/or local standards or regulations.

(b) *Vegetative manipulation.* Management prescriptions that involve vegetative manipulation of tree cover for any purpose shall—

(1) Be best suited to the multiple-use goals established for the area with potential environmental, biological, cultural resource, aesthetic, engineering, and economic impacts, as stated in the regional guides and forest plans, being considered in this determination;

(2) Assure that lands can be adequately restocked as provided in paragraph (c)(3) of this section, except where permanent openings are created for wildlife habitat improvement, vistas, recreation uses and similar practices;

(3) Not be chosen primarily because they will give the greatest dollar return or the greatest output of timber, although these factors shall be considered;

(4) Be chosen after considering potential effects on residual trees and adjacent stands;

(5) Avoid permanent impairment of site productivity and ensure conservation of soil and water resources;

(6) Provide the desired effects on water quantity and quality, wildlife and fish habitat, regeneration of desired tree species, forage production, recreation uses, aesthetic values, and other resource yields; and

(7) Be practical in terms of transportation and harvesting requirements, and total costs of preparation, logging, and administration.

(c) *Silvicultural practices.* The following management requirements apply to timber harvest and cultural treatments:

(1) No timber harvesting shall occur on lands classified as not suited for timber production pursuant to § 219.14 except for salvage sales, sales necessary to protect other multiple-use values or activities that meet other objectives on such lands if the forest plan establishes that such actions are appropriate. These lands shall continue to be treated for reforestation purposes if necessary to achieve the multiple-use objectives of the plan.

(2) The selected sale schedule provides the allowable sale quantity for the first planning period. Within the planning period, the volume of timber to be sold in any one year may exceed the average annual allowable sale

quantity so long as the total amount sold for the planning period does not exceed the allowable sale quantity. Nothing in this paragraph prohibits salvage or sanitation harvesting of timber stands which are substantially damaged by fire, windthrow, or other catastrophe, or which are in imminent danger of insect or disease attack and where such harvests are consistent with silvicultural and environmental standards. Such timber may either substitute for timber that would otherwise be sold under the plan or, if not feasible, be sold over and above the planned volume.

(3) When trees are cut to achieve timber production objectives, the cuttings shall be made in such a way as to assure that the technology and knowledge exists to adequately restock the lands within 5 years after final harvest. Research and experience shall be the basis for determining whether the harvest and regeneration practices planned can be expected to result in adequate restocking. Adequate restocking means that the cut area will contain the minimum number, size, distribution, and species composition of regeneration as specified in regional silvicultural guides for each forest type. Five years after final harvest means 5 years after clearcutting, 5 years after final overstory removal in shelterwood cutting, 5 years after the seed tree removal cut in seed tree cutting, or 5 years after selection cutting.

(4) Cultural treatments such as thinning, weeding, and other partial cutting may be included in the forest plan where they are intended to increase the rate of growth of remaining trees, favor commercially valuable tree species, favor species or age classes which are most valuable for wildlife, or achieve other multiple-use objectives.

(5) Harvest levels based on intensified management practices shall be decreased no later than the end of each planning period if such practices cannot be completed substantially as planned.

(6) Timber harvest cuts designed to regenerate an even-aged stand of timber shall be carried out in a manner consistent with the protection of soil, watershed, fish and wildlife, recreation, and aesthetic resources, and the regeneration of the timber resource.

(7) Timber harvest and other silvicultural treatments shall be used to prevent potentially damaging population increases of forest pest organisms. Silvicultural treatments shall not be applied where such treatments would make stands susceptible to pest-caused damage levels inconsistent with management objectives.

(d) *Even-aged management.* When openings are created in the forest by the application of even-aged silviculture, the following management requirements apply:

(1) Openings shall be located to achieve the desired combination of multiple-use objectives. The blocks or strips cut shall be shaped and blended with the natural terrain, to the extent practicable, to achieve aesthetic, wildlife habitat, or other objectives established in the plan. Regional guides shall provide guidance on dispersion of openings in relation to topography, climate, geography, local land use patterns, forest types or other factors. As a minimum, openings in forest stands are no longer considered openings once a new forest is established. Forest plans may set forth variations to this minimum based on site-specific requirements for achieving multiple-use objectives. Regional guides shall provide guidance for determining variations to this minimum in the forest plan, based on requirements for watershed, wildlife habitat, scenery or other resource protection needs, or other factors.

(2) Individual cut blocks, patches, or strips shall conform to the maximum size limits for areas to be cut in one harvest operation established by the regional guide according to geographic areas and forest types. This limit may be less than, but will not exceed, 60 acres for the Douglas-fir forest type of California, Oregon, and Washington; 80 acres for the southern yellow pine types of Alabama, Arkansas, Georgia, Florida, Louisiana, Mississippi, North Carolina, South Carolina, Oklahoma, and Texas; 100 acres for the hemlock-sitka spruce forest type of coastal Alaska; and 40 acres for all other forest types except as provided in

paragraphs (d)(2) (i) through (iii) of this section:

(i) Cut openings larger than those specified may be permitted where larger units will produce a more desirable combination of net public benefits. Such exceptions shall be provided for in regional guides. The following factors shall be considered in evaluating harvest cuts of various sizes and shapes to determine size limits by geographic areas and forest types: Topography; relationship of units to other natural or artificial openings and proximity of units; coordination and consistency with adjacent forests and regions; effect on water quality and quantity; visual absorption capability; effect on wildlife and fish habitat; regeneration requirements for desirable tree species based upon the latest research findings; transportation and harvesting system requirements; environmental and forest pest hazards to regeneration, residual trees, and surrounding stands; and the relative total costs of preparation and administration, transportation requirements, harvesting, site preparation, planting, stocking control, and future stand tending of harvest cuts of various sizes and shapes. Specification for exceptions shall include the particular conditions under which the larger size is permitted and shall set a new maximum size permitted under those conditions.

(ii) Size limits exceeding those established in paragraphs (d)(2) and (d)(2)(i) of this section are permitted on an individual timber sale basis after 60 days' public notice and review by the Regional Forester.

(iii) The established limit shall not apply to the size of areas harvested as a result of natural catastrophic condition such as fire, insect and disease attack, or windstorm.

(e) *Riparian areas.* Special attention shall be given to land and vegetation for approximately 100 feet from the edges of all perennial streams, lakes, and other bodies of water. This area shall correspond to at least the recognizable area dominated by the riparian vegetation. No management practices causing detrimental changes in water temperature or chemical composition, blockages of water courses, or deposits of sediment shall be permitted within these areas which seriously and adversely affect water conditions or fish habitat. Topography, vegetation type, soil, climatic conditions, management objectives, and other factors shall be considered in determining what management practices may be performed within these areas or the constraints to be placed upon their performance.

(f) *Soil and water.* Conservation of soil and water resources involves the analysis, protection, enhancement, treatment, and evaluation of soil and water resources and their responses under management and shall be guided by instructions in official technical handbooks. These handbooks must show specific ways to avoid or mitigate damage, and maintain or enhance productivity on specific sites. These handbooks may be regional in scope or, where feasible, specific to physiographic or climatic provinces.

(g) *Diversity.* Management prescriptions, where appropriate and to the extent practicable, shall preserve and enhance the diversity of plant and animal communities, including endemic and desirable naturalized plant and animal species, so that it is at least as great as that which would be expected in a natural forest and the diversity of tree species similar to that existing in the planning area. Reductions in diversity of plant and animal communities and tree species from that which would be expected in a natural forest, or from that similar to the existing diversity in the planning area, may be prescribed only where needed to meet overall multiple-use objectives. Planned type conversion shall be justified by an analysis showing biological, economic, social, and environmental design consequences, and the relation of such conversions to the process of natural change.

§ 219.28 Research.

(a) Research needs for management of the National Forest System shall be identified during planning and periodically reviewed during evaluation of implemented plans. Particular attention should be given to research needs identified during the monitoring and evaluation described in § 219.12(k).

These identified needs shall be included in formulating overall research programs and plans which involve private as well as public forest and rangelands.

(b) Research needed to support or improve management of the National Forest System shall be established and budgeted at the research station and national levels. Priorities for this portion of the Forest Service Research Program shall be based upon the information gathered at all planning levels of the National Forest System.

(c) An annual report shall be prepared at the national level with assistance from Regions and Stations which shall include, but not be limited to, a description of the status of major research programs which address National Forest System needs for Research, significant findings, and how this information is to be or has recently been applied.

§ 219.29 Transition period.

(a) Until a forest planning area of the National Forest System is managed under a forest plan developed pursuant to this subpart and approved by the Regional Forester, the land may continue to be managed under existing land use and resource plans. As soon as practicable, existing plans shall be amended or revised to incorporate standards and guidelines in this subpart. Pending approval of a forest plan, existing plans may be amended or revised to include management requirements not inconsistent with the provisions of the RPA and these regulations.

(b) Requirements of amendments to this subpart shall be incorporated in forest plans and regional guides through the ongoing planning process. Planning process steps already completed need not be repeated.

(1) If, prior to the effective date of an amendment to this subpart, a forest plan either has been approved in final form or released in draft form for public review, the plan need not be modified to incorporate requirements of such amendment, until the next scheduled revision of the forest plan;

(2) If, prior to the effective date of an amendment to this subpart, a regional guide either has been approved in final form or released in draft form for public review, the guide need not be modified to incorporate the requirements of such amendment, until a significant amendment to the guide is made for reasons other than incorporating requirements of amendments to this subpart.

(c) A forest plan may become effective prior to the development and approval of its related regional guide, provided that the forest plan is reviewed upon regional guide approval, and if necessary, amended to comply with regional management direction. If such an amendment is significant, it shall be accomplished pursuant to the requirements for the development of a forest plan as set forth in this subpart.

(d) As a result of the eruption of Mount St. Helens, a land management plan for the Mount St. Helens area shall be prepared substantially in accordance with the following procedures:

(1) Notwithstanding any other provisions in this subpart, the area included in the Mount St. Helens land management plan will not be subject to planning activities for the first generation Gifford Pinchot National Forest Plan unless the Regional Forester for the Pacific Northwest Region determines that additional planning activities are desirable.

(2) Lands which were inventoried as roadless and designated for nonwilderness uses in the Roadless Area Review and Evaluation (RARE II) shall be managed for uses other than wilderness. Except for a small part of the Mount Margaret roadless area (B 6071), the Mount St. Helens land management plan shall not consider wilderness designation for these lands.

(3) Lands which were inventoried as roadless and designated as further planning in the Roadless Area Review and Evaluation (RARE II) shall be evaluated in the Mount St. Helens land management plan and shall be managed in accordance with that plan.

PART 221—TIMBER MANAGEMENT PLANNING

AUTHORITY: 30 Stat. 34, 44 Stat. 242; 16 U.S.C. 475, 616.

§ 221.3 Disposal of national forest timber according to management plans.

(a) Management plans for national forest timber resources shall be prepared and revised, as needed, for working circles or other practicable units of national forest. Such plans shall:

(1) Be designed to aid in providing a continuous supply of national forest timber for the use and necessities of the citizens of the United States.

(2) Be based on the principle of sustained yield, with due consideration to the condition of the area and the timber stands covered by the plan.

(3) Provide, so far as feasible, an even flow of national forest timber in order to facilitate the stabilization of communities and of opportunities for employment.

(4) Provide for coordination of timber production and harvesting with other uses of national forest land in accordance with the principles of multiple use management.

(5) Establish the allowable cutting rate which is the maximum amount of timber which may be cut from the national forest lands within the unit by years or other periods.

(6) Be approved by the Chief, Forest Service, unless authority for such approval shall be delegated to subordinates by the Chief.

(b) When necessary to promote better utilization of national forest timber or to facilitate protection and management of the national forests, a management plan may include provisions for requirements of purchasers for processing the timber to at least a stated degree within the working circle, or within a stated area, and, when appropriate, by machinery of a stated type; and agreements for cutting in accordance with the plan may so require.

[13 FR 7711, Dec. 14, 1948, as amended at 28 FR 723, Jan. 26, 1963; 34 FR 743, Jan. 17, 1969]

PART 222—RANGE MANAGEMENT

Subpart A—Grazing and Livestock Use on the National Forest System

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AUTHORITY: 7 U.S.C. 1010-1012; 16 U.S.C. 551; 16 U.S.C. 572; 31 U.S.C. 9701; 43 U.S.C. 1901; E.O. 12548, 51 FR 1986 Comp., p. 188.

Subpart A—Grazing and Livestock Use on the National Forest System

AUTHORITY: 92 Stat. 1803, as amended (43 U.S.C. 1901), 85 Stat. 649, as amended (16 U.S.C. 1331-1340); sec. 1, 30 Stat. 35, as amended (16 U.S.C. 551); sec. 32, 50 Stat. 522, as amended (7 U.S.C. 1011).

SOURCE: 42 FR 56732, Oct. 28, 1977, unless otherwise noted.

§ 222.1 Authority and definitions.

(a) *Authority.* The Chief, Forest Service, shall develop, administer and protect the range resources and permit and regulate the grazing use of all kinds and classes of livestock on all National Forest System lands and on other lands under Forest Service control. He may redelegate this authority.

(b) *Definitions.* (1) An *allotment* is a designated area of land available for livestock grazing.

(2) An *allotment management plan* is a document that specifies the program of action designated to reach a given set of objectives. It is prepared in consultation with the permittee(s) involved and:

(i) Prescribes the manner in and extent to which livestock operations will be conducted in order to meet the multiple-use, sustained yield, economic, and other needs and objectives as determined for the lands, involved; and

(ii) Describes the type, location, ownership, and general specifications for the range improvements in place or to be installed and maintained on the lands to meet the livestock grazing and other objectives of land management; and

(iii) Contains such other provisions relating to livestock grazing and other objectives as may be prescribed by the Chief, Forest Service, consistent with applicable law.

(3) *Base property* is land and improvements owned and used by the permittee for a farm or ranch operation and specifically designated by him to qualify for a term grazing permit.

(4) *Cancel* means action taken to permanently invalidate a term grazing permit in whole or in part.

(5) A *grazing permit* is any document authorizing livestock to use National Forest System or other lands under Forest Service control for the purpose of livestock production including:

(i) *Temporary grazing permits* for grazing livestock temporarily and without priority for reissuance.

(ii) *Term permits* for up to 10 years with priority for renewal at the end of the term.

(6) *Land subject to commercial livestock grazing* means National Forest System lands within established allotments.

(7) *Lands within National Forest in the 16 contiguous western States* means lands designated as National Forest within the boundaries of Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming (National Grasslands are excluded).

(8) *Livestock* means animals of any kind kept or raised for use or pleasure.

(9) *Livestock use permit* means a permit issued for not to exceed one year where the primary use is for other than grazing livestock.

(10) *Modify* means to revise the terms and conditions of an issued permit.

(11) *National Forest System lands,* are the National Forests, National Grasslands, Land Utilization Projects, and other Federal lands for which the Forest Service has administrative jurisdiction.

(12) *On-and-off grazing permits* are permits with specific provisions on range only part of which is National Forest System lands or other lands under Forest Service control.

(13) *On-the-ground expenditure* means payment of direct project costs of implementing an improvement or development, such as survey and design, equipment, labor and material (or contract) costs, and on-the-ground supervision.

(14) *Other lands under Forest Service control* are non-Federal public and private lands over which the Forest

Service has been given control through lease, agreement, waiver, or otherwise.

(15) *Private land grazing permits* are permits issued to persons who control grazing lands adjacent to National Forest System lands and who waive exclusive grazing use of these lands to the United States for the full period the permit is to be issued.

(16) *Permittee* means any person who has been issued a grazing permit.

(17) *Permitted livestock* is livestock authorized by a written permit.

(18) *Person* means any individual, partnership, corporation, association, organization, or other private entity, but does not include Government Agencies.

(19) *Range betterment* means rehabilitation, protection and improvement of National Forest System lands to arrest range deterioration and improve forage conditions, fish and wildlife habitat, watershed protection, and livestock production.

(20) *Range betterment fund* means the fund established by title IV, section 401(b)(1), of the Federal Land Policy and Management Act of 1976. This consists of 50 percent of all monies received by the United States as fees for grazing livestock on the National Forests in the 16 contiguous western States.

(21) *Range Improvement* means any activity or program designed to improve production of forage and includes facilities or treatments constructed or installed for the purpose of improving the range resource or the management of livestock and includes the following types:

(i) *Non-structural* which are practices and treatments undertaken to improve range not involving construction of improvements.

(ii) *Structural* which are improvements requiring construction or installation undertaken to improve the range or to facilitate management or to control distribution and movement of livestock.

(A) *Permanent* which are range improvements installed or constructed and become a part of the land such as: dams, ponds, pipelines, wells, fences, trails, seeding, etc.

(B) *Temporary* which are short-lived or portable improvements that can be removed such as: troughs, pumps and electric fences, including improvements at authorized places of habitation such as line camps.

(22) *Suspend* means temporary withholding of a term grazing permit privilege, in whole or in part.

(23) *Term period* means the period for which term permits are issued, the maximum of which is 10 years.

(24) *Transportation livestock* is livestock used as pack and saddle stock for travel on the National Forest System.

(Sec. 1, 30 Stat. 35, as amended (16 U.S.C. 551); sec. 1, 33 Stat. 628 (16 U.S.C. 472); sec. 32, 50 Stat. 525, as amended (7 U.S.C. 1011); sec. 19, 64 Stat. 88 (16 U.S.C. 580l); Title IV, Pub. L. 94, 90 Stat. 2771 (43 U.S.C. 1751, et seq.); 92 Stat. 1803 (43 U.S.C. 1901))

[42 FR 56732, Oct. 28, 1977, as amended at 44 FR 61345, Oct. 25, 1979]

§ 222.2 Management of the range environment.

(a) Allotments will be designated on the National Forest System and on other lands under Forest Service control where the land is available for grazing. Associated private and other public lands should, but only with the consent of the landowner, lessee, or agency, be considered in such designations to form logical range management units.

(b) Each allotment will be analyzed and with careful and considered consultation and cooperation with the affected permittees, landowners, and grazing advisory boards involved, as well as the State having land within the area covered, and an allotment management plan developed. The plan will then be approved and implemented. The analysis and plan will be updated as needed.

(c) Forage producing National Forest System lands will be managed for livestock grazing and the allotment management plans will be prepared consistent with land management plans.

(Sec. 1, 30 Stat. 35, as amended (16 U.S.C. 551); sec. 1, 33 Stat. 628 (16 U.S.C. 472); sec. 32, 50 Stat. 525, as amended (7 U.S.C. 1011); sec. 19, 64 Stat. 88 (16 U.S.C. 580l); Title IV, Pub. L. 94, 90 Stat. 2771 (43 U.S.C. 1751, et seq.); 92 Stat. 1803 (43 U.S.C. 1901))

[42 FR 56732, Oct. 28, 1977, as amended at 44 FR 61346, Oct. 25, 1979; 46 FR 42449, Aug. 21, 1981]

§ 222.3 Issuance of grazing and livestock use permits.

(a) Unless otherwise specified by the Chief, Forest Service, all grazing and livestock use on National Forest System lands and on other lands under Forest Service control must be authorized by a grazing or livestock use permit.

(b) Grazing permits and livestock use permits convey no right, title, or interest held by the United States in any lands or resources.

(c) The Chief, Forest Service, is authorized to issue permits for livestock grazing and other use by livestock of the National Forest System and on other lands under Forest Service control as follows:

(1) Grazing permits with priority for renewal may be issued as follows: On National Forests in the 16 contiguous western States 10-year term permits will be issued unless the land is pending disposal, or will be devoted to other uses prior to the end of ten years, or it will be in the best interest of sound land management to specify a shorter term. On National Forest System lands other than National Forests in the 16 contiguous western States, the permit term shall be for periods of 10 years or less. Term grazing permits for periods of 10 years or less in the form of grazing agreements may be issued to cooperative grazing associations or similar organizations incorporated or otherwise established pursuant to State law. Such an agreement will make National Forest System lands and improvements available to the association for grazing in accordance with provisions of the grazing agreement and Forest Service policies. Term permits authorized in this paragraph may be in the form of private land or on-and-off grazing permits where the person is qualified to hold such permits under provisions the Chief may require. Permits issued under this paragraph are subject to the following:

(i) Except as provided for by the Chief, Forest Service, paid term permits will be issued to persons who own livestock to be grazed and such base property as may be required, provided the land is determined to be available for grazing purposes by the Chief, Forest Service, and the capacity exists to graze specified numbers of animals.

(ii) A term permit holder has first priority for receipt of a new permit at the end of the term period provided he has fully complied with the terms and conditions of the expiring permit.

(iii) In order to update terms and conditions, term permits may be cancelled at the end of the calendar year of the midyear of the decade (1985, 1995, etc.), provided they are reissued to the existing permit holder for a new term of 10 years.

(iv) New term permits may be issued to the purchaser of a permittee's permitted livestock and/or base property, provided the permittee waives his term permit to the United States and provided the purchaser is otherwise eligible and qualified.

(v) If the permittee chooses to dispose of all or part of his base property or permitted livestock (not under approved nonuse) but does not choose to waive his term permit, the Forest Supervisor will give written notice that he no longer is qualified to hold a permit, provided he is given up to one year to reestablish his qualifications before cancellation action is final.

(vi) The Chief, Forest Service, shall prescribe provisions and requirements under which term permits will be issued, renewed, and administered, including:

(A) The amount and character of base property and livestock the permit holder shall be required to own.

(B) Specifying the period of the year the base property shall be capable of supporting permitted livestock.

(C) Acquisition of base property and/or permitted livestock.

(D) Conditions for the approval of nonuse of permit for specified periods.

(E) Upper and special limits governing the total number of livestock for which a person is entitled to hold a permit.

(F) Conditions whereby waiver of grazing privileges may be confirmed and new applicants recognized.

(2) Permits with no priority for reissuance, subject to terms and condi-

tions as the Chief, Forest Service, may prescribe, are authorized as follows:

(i) Temporary grazing permits for periods not to exceed one year, and on a charge basis, may be issued:

(A) To allow for use of range while a term grazing permit is held in suspension.

(B) To use forage created by unusually favorable climatic conditions.

(C) To use the forage available when the permit of the normal user's livestock is in nonuse status for reasons of personal convenience.

(D) To allow a person to continue to graze livestock for the remainder of the grazing season where base property has been sold, the permit waived, and a new term permit issued.

(E) To allow grazing use in the event of drought or other emergency of National or Regional scope where such use would not result in permanent resource damage.

(ii) Livestock use permits for not to exceed one year may be issued under terms and conditions prescribed by the Chief, Forest Service, as follows:

(A) Paid permits for transportation livestock to persons engaged in commercial packing, dude ranching, or other commercial enterprises which involve transportation livestock including mining, ranching, and logging, activities.

(B) Paid or free permits for research purposes and administrative studies.

(C) Paid or free permits to trail livestock across National Forest System lands.

(D) Free permits to persons who reside on ranch or agricultural lands within or contiguous to National Forest System lands for not to exceed 10 head of livestock owned or kept and whose products are consumed or whose services are used directly by the family of the resident, and who distinctly need such National Forest System lands to support such animals.

(E) Free permits to campers and travelers for the livestock actually used during the period of occupancy. This may be authorized without written permit.

(F) Paid or free permits for horses, mules, or burros to persons who clearly need National Forest System land to support the management of permitted livestock.

(G) Free permits for horses, mules, or burros to cooperators who clearly need National Forest System land to support research, adminstration or other work being conducted. This may be authorized without written permit.

(H) Paid permits to holders of grazing permits for breeding animals used to service livestock permitted to graze on lands administered by the Forest Service.

(I) Paid permits or cooperative agreements entered into as a management tool to manipulate revegation on a given parcel of land.

[42 FR 56732, Oct. 28, 1977, as amended at 43 FR 27532, June 26, 1978; 44 FR 61345, Oct. 25, 1979; 46 FR 42449, Aug. 21, 1981]

§ 222.4 Changes in grazing permits.

(a) The Chief, Forest Service, is authorized to cancel, modify, or suspend grazing and livestock use permits in whole or in part as follows:

(1) Cancel permits where lands grazed under the permit are to be devoted to another public purpose including disposal. In these cases, except in an emergency, no permit shall be cancelled without two years' prior notification.

(2) Cancel the permit in the event the permittee:

(i) Refuses to accept modification of the terms and conditions of an existing permit.

(ii) Refuses or fails to comply with eligibility or qualification requirements.

(iii) Waives his permit back to the United States.

(iv) Fails to restock the allotted range after full extent of approved personal convenience non-use has been exhausted.

(v) Fails to pay grazing fees within established time limits.

(3) Cancel or suspend the permit if the permittee fails to pay grazing fees within established time limit.

(4) Cancel or suspend the permit if the permittee does not comply with provisions and requirements in the grazing permit or the regulations of the Secretary of Agriculture on which the permit is based.

(5) Cancel or suspend the permit if the permittee knowingly and willfully makes a false statement or representation in the grazing application or amendments thereto.

(6) Cancel or suspend the permit if the permit holder is convicted for failing to comply with Federal laws or regulations or State laws relating to protection of air, water, soil and vegetation, fish and wildlife, and other environmental values when exercising the grazing use authorized by the permit.

(7) Modify the terms and conditions of a permit to conform to current situations brought about by changes in law, regulation, executive order, development or revision of an allotment management plan, or other management needs.

(8) Modify the seasons of use, numbers, kind, and class of livestock allowed or the allotment to be used under the permit, because of resource condition, or permittee request. One year's notice will be given of such modification, except in cases of emergency.

(b) Association permits or grazing agreements may be canceled for noncompliance with title VI of the Civil Rights Act of 1964 and Department of Agriculture regulation promulgated thereunder.

[42 FR 56732, Oct. 28, 1977, as amended at 46 FR 42449, Aug. 21, 1981]

§ 222.6 Compensation for permittees' interest in authorized permanent improvements.

(a) Whenever a term permit for grazing livestock on National Forest land in the 16 contiguous western States is canceled in whole or in part to devote the lands covered by the permit to another public purpose, including disposal, the permittee shall receive from the United States a reasonable compensation for the adjusted value of his interest in authorized permanent improvements placed or constructed by him on the lands covered by the canceled permit. The adjusted value is to be determined by the Chief, Forest Service. Compensation received shall not exceed the fair market value of the terminated portion of the permittee's interest therein.

(b) In the event a permittee waives his grazing permit in connection with sale of his base property or permitted livestock, he is not entitled to compensation.

(Sec. 1, 30 Stat. 35, as amended (16 U.S.C. 551); sec. 1, 33 Stat. 628 (16 U.S.C. 472); sec. 32, 50 Stat. 525, as amended (7 U.S.C. 1011); sec. 19, 64 Stat. 88 (16 U.S.C. 5801); Title IV, Pub. L. 94, 90 Stat. 2771 (43 U.S.C. 1751, et seq.); 92 Stat. 1803 (43 U.S.C. 1901))

[42 FR 56732, Oct. 28, 1977, as amended at 44 FR 61345, Oct. 25, 1979]

§ 222.7 Cooperation in management.

(a) *Cooperation with local livestock associations*—(1) *Authority.* The Chief, Forest Service, is authorized to recognize, cooperate with, and assist local livestock associations in the management of the livestock and range resources on a single range allotment, associated groups of allotments, or other association-controlled lands on which the members' livestock are permitted to graze.

(2) *Purposes.* These associations will provide the means for the members to:

(i) Manage their permitted livestock and the range resources.

(ii) Meet jointly with Forest officers to discuss and formulate programs for management of their livestock and the range resources.

(iii) Express their wishes through their designated officers or committees.

(iv) Share costs for handling of livestock, construction and maintenance of range improvements or other accepted programs deemed needed for proper management of the permitted livestock and range resources.

(v) Formulate association special rules needed to ensure proper resource management.

(3) *Requirements for recognition.* The requirements for receiving recognition by the Forest Supervisor are:

(i) The members of the association must constitute a majority of the grazing permittees on the range allotment or allotments involved.

(ii) The officers of the association must be elected by a majority of the association members or of a quorum as specified by the association's constitution and bylaws.

(iii) The officers other than the Secretary and Treasurer must be grazing permittees on the range allotment or allotments involved.

(iv) The association's activities must be governed by a constitution and bylaws acceptable to the Forest Supervisor and approved by him.

(4) *Withdrawing recognition.* The Forest Supervisor may withdraw his recognition of the association whenever:

(i) The majority of the grazing permittees request that the association be dissolved.

(ii) The association becomes inactive, and does not meet in annual or special meetings during a consecutive 2-year period.

(b) *Cooperation with national, State, and county livestock organizations.* The policies and programs of national, State, and county livestock organizations give direction to, and reflect in, the practices of their members. Good working relationships with these groups is conducive to the betterment of range management on both public and private lands. The Chief, Forest Service, will endeavor to establish and maintain close working relationships with National livestock organizations who have an interest in the administration of National Forest System lands, and direct Forest officers to work cooperatively with State and county livestock organizations having similar interests.

(c) *Interagency cooperation.* The Chief, Forest Service, will cooperate with other Federal agencies which have interest in improving range management on public and private lands.

(d) *Cooperation with others.* The Chief, Forest Service, will cooperate with other agencies, institutions, organizations, and individuals who have interest in improvement of range management on public and private lands.

§ 222.8 Cooperation in control of estray or unbranded livestock, animal diseases, noxious farm weeds, and use of pesticides.

(a) Insofar as it involves National Forest System lands and other lands under Forest Service control or the livestock which graze thereupon, the Chief, Forest Service, will cooperate with:

(1) State, county, and Federal agencies in the application and enforcement of all laws and regulations relating to livestock diseases, sanitation and noxious farm weeds.

(2) The Animal and Plant Health Inspection Service and other Federal or State agencies and institutions in surveillance of pesticides spray programs; and

(3) State cattle and sheep sanitary or brand boards in control of estray and unbranded livestock to the extent it does not conflict with the Wild Free-Roaming Horse and Burro Act of December 15, 1971.

(b) The Chief, Forest Service, will cooperate with county or other local weed control districts in analyzing noxious farm weed problems and developing control programs in areas of which the National Forests and National Grasslands are a part.

(85 Stat. 649 (16 U.S.C. 1331-1340))

§ 222.9 Range improvements.

(a) The Chief, Forest Service, is authorized to install and maintain structural and nonstructural range improvements needed to manage the range resource on National Forest System lands and other lands controlled by the Forest Service.

(b) Such improvements may be constructed or installed and maintained, or work performed by individuals, organizations or agencies other than the Forest Service subject to the following:

(1) All improvements must be authorized by cooperative agreement or memorandum of understanding, the provisions of which become a part of the grazing permit(s).

(2) Title to permanent structural range improvements shall rest in the United States.

(3) Title to temporary structural range improvements may be retained by the Cooperator where no part of the cost for the improvement is borne by the United States.

(4) Title to nonstructural range improvements shall vest in the United States.

(5) Range improvement work performed by a cooperator or permittee on National Forest System lands shall not confer the exclusive right to use the improvement or the land influenced.

(c) A user of the range resource on National Forest System lands and other lands under Forest Service control may be required by the Chief, Forest Service, to maintain improvements to specified standards.

(d) Grazing fees or the number of animal months charged shall not be adjusted to compensate permittees for range improvement work performed on National Forest System lands: Provided, That, in accordance with section 32(c), title III, Bankhead-Jones Farm Tenant Act, the cost to grazing users in complying with requirements of a grazing permit or agreement may be considered in determining the annual grazing fee on National Grasslands or land utilization projects if it has not been used in establishing the grazing base value.

§ 222.10 Range betterment fund.

In addition to range development which is accomplished through funds from the rangeland management budget line item and the Granger-Thye Act, and deposited and nondeposited cooperative funds, range development may also be accomplished through use of the range betterment fund as follows:

(a) On National Forest land within the 16 contiguous western States, the Chief, Forest Service, shall implement range improvement programs where necessary to arrest range deterioration and improve forage conditions with resulting benefits to wildlife, watershed protection, and livestock production. One-half of the available funds will be expended on the National Forest where derived. The remaining one-half of the fund will be allocated for range rehabilitation, protection and improvements on National Forest lands within the Forest Service Regions where they were derived. During the planning process there will be consultation with grazing permittees who will be affected by the range rehabilitation, protection and improvements, and other interested persons or organizations.

(b) Range betterment funds shall be utilized only for on-the-ground expenditure for range land betterment, including, but not limited to, seeding and reseeding, fence construction, water development, weed and other plant control, and fish and wildlife habitat enhancement within allotments.

(Sec. 1, 30 Stat. 35, as amended (16 U.S.C. 551); sec. 1, 33 Stat. 628 (16 U.S.C. 472); sec. 32, 50 Stat. 525, as amended (7 U.S.C. 1011); sec. 19, 64 Stat. 88 (16 U.S.C. 5801); Title IV, Pub. L. 94, 90 Stat. 2771 (43 U.S.C. 1751, et seq.); 92 Stat. 1803 (43 U.S.C. 1901))

[42 FR 56732, Oct. 28, 1977, as amended at 44 FR 61345, Oct. 25, 1979]

§ 222.11 Grazing advisory boards.

(a) *Establishment.* Persons holding term permits to graze livestock on National Forest System lands with headquarters, office in the 16 contiguous western States having jurisdiction over more than 500,000 acres of land subject to commercial livestock grazing may petition the Forest Supervisor for establishment of a statutory grazing advisory board in accordance with provisions of the Federal Land Policy and Management Act of 1976.

(1) Upon being properly petitioned by a simple majority (more than 50 percent) of term grazing permittees under the jurisdiction of such headquarters office, the Secretary shall establish and maintain at least one grazing advisory board.

(2) The Chief, Forest Service, shall determine the number of such boards, the area to be covered, and the number of advisers on each board.

(3) Processing Petitions. Upon receiving a proper petition from the grazing permittees, the Forest Supervisor will request the Chief, Forest Service, through the Regional Forester, to initiate action to establish grazing advisory boards in accordance with regulations of the Secretary of Agriculture. Grazing advisory boards will comply with the provisions of the Federal Advisory Committee Act.

(b) *Membership.* Grazing advisory boards established under this authority shall consist of members who are National Forest System term permittees under the jurisdiction of a National Forest headquarters office in the 16 contiguous western States, provided board members shall be elected by term grazing permittees in the area covered by the board.

(c) *Elections.* The Forest Supervisor of the headquarters office shall prescribe and oversee the manner in which permittees are nominated and board members are elected. Nominations will be made by petition with all term grazing permittees under the jurisdiction of such headquarters office being eligible for membership on the board. All members of the board will be elected by secret ballot with each term grazing permittee in the area covered by the board being qualified to vote. No person shall be denied the opportunity to serve as a grazing advisory board member because of race, color, sex, religion, or national origin. No board member shall concurrently serve on another USDA advisory committee. The Forest Supervisor shall determine and announce the results of the election of the members of the board and shall recognize the duly elected board as representing National Forest System term grazing permittees in the areas for which it is established. Board members will be elected to terms not to exceed 2 years.

(d) *Charter and bylaws.* (1) The Forest Supervisor will prepare a charter to be filed with the Department and the Congress as required by Section 9(c) of the Federal Advisory Committee Act.

(2) A duly recognized grazing advisory board may, with the concurrence of a majority of its members and the Forest Supervisor, adopt bylaws to govern its proceedings.

(e) *Function.* The function of grazing advisory boards will be to offer advice and make recommendations concerning the development of allotment management plans and the utilization of range betterment funds.

(f) *Meetings.* The Forest Supervisor shall call at least one meeting of each board annually, and call additional meetings as needed to meet the needs of the permittees and the Forest Service. Each meeting shall be conducted in accordance with an agenda approved by the Forest Supervisor and in the presence of a Forest officer.

(g) *Termination.* (1) Grazing advisory boards established under the Federal Land Policy and Management Act of 1976 shall continue until December 31, 1985, unless terminated earlier.

(2) The Forest Supervisor may withdraw recognition of any board whenever:

(i) A majority of the term grazing permittees for the area which the board represents requests that the board be dissolved.

(ii) The board becomes inactive and does not meet at least once each calendar year.

(86 Stat. 770 (5 U.S.C., App. 1); sec. 1, 30 Stat. 35, as amended (16 U.S.C. 551); sec. 1, 33 Stat. 628 (16 U.S.C. 472); sec. 32, 50 Stat. 525, as amended (7 U.S.C. 1011); sec. 19, 64 Stat. 88 (16 U.S.C. 5801); Title IV, Pub. L. 94, 90 Stat. 2771 (43 U.S.C. 1751, et seq.); 92 Stat. 1803 (43 U.S.C. 1901))

[42 FR 56732, Oct. 28, 1977, as amended at 43 FR 27532, June 26, 1978; 44 FR 61345, Oct. 25, 1979]

Subpart B—Management of Wild Free-Roaming Horses and Burros

AUTHORITY: 85 Stat. 649, as amended (16 U.S.C. 1331-1340); sec. 1, 30 Stat. 35, as amended (16 U.S.C. 551); sec. 32, 50 Stat. 522, as amended (7 U.S.C. 1011); 92 Stat. 1803 (43 U.S.C. 1901 note).

SOURCE: 45 FR 24135, Apr. 9, 1980, unless otherwise noted.

§ 222.20 Authority and definitions.

(a) *Authority.* The Chief, Forest Service, shall protect, manage, and control wild free-roaming horses and burros on lands of the National Forest System and shall maintain vigilance for the welfare of wild free-roaming horses and burros that wander or migrate from the National Forest System. If these animals also use lands administered by the Bureau of Land Management as a part of their habitat, the Chief, Forest Service, shall cooperate to the fullest extent with the Department of the Interior through the Bureau of Land Management in administering the animals.

(b) *Definitions.*

(1) *Act* means the Act of December 15, 1971 (85 Stat. 649, as amended, 16 U.S.C. 1331-1340).

(2) *Captured animal* means a wild free-roaming horse or burro taken and held in the custody of an authorized officer, his delegate, or agent. This term does not apply to an animal after it is placed in private custody through a Private Maintenance and Care agreement.

(3) *Excess animals* means wild free-roaming horses and burros which have been removed by authorized personnel pursuant to applicable law or which must be removed from an area in order to preserve and maintain a thriving natural ecological balance in coordination with other resources and activities.

(4) *Herd* means one or more stallions and their mares, or jacks and their jennies.

(5) *Humane treatment* means kind and merciful treatment, without causing unnecessary stress or suffering to the animal.

(6) *Inhumane treatment* means causing physical stress to an animal through any harmful action or omission that is not compatible with standard animal husbandry practices; causing or allowing an animal to suffer from a lack of necessary food, water, or shelter; using any equipment, apparatus, or technique during transportation, domestication, or handling that causes undue injury to an animal; or failing to treat or care for a sick or injured animal.

(7) *Lame* means a wild free-roaming horse or burro with malfunctioning muscles, ligaments or limbs that impair freedom of movement.

(8) *Malicious harassment* means any intentional act demonstrating deliberate disregard for the well-being of wild free-roaming horses and burros and which creates a likelihood of injury or is detrimental to normal behavior pattern of wild free-roaming horses or burros including feeding, watering, resting, and breeding. Such acts include, but are not limited to, unauthorized chasing, pursuing, herding, roping, or attempting to gather wild free-roaming horses or burros. It does not apply to activities conducted by or on behalf of the Forest Service or the Bureau of Land Management in implementation or performance of duties and responsibilities under the Act.

(9) *National Advisory Board* means the Advisory Board as established jointly by the Secretary of Agriculture and the Secretary of the Interior under the provisions of the Act.

(10) *National Forest System* includes the National Forests, National Grasslands, and other Federal lands for which the Forest Service has administrative jurisdiction.

(11) *Old* means a wild free-roaming horse or burro characterized by inability to fend for itself because of age, physical deterioration, suffering or closeness to death.

(12) *Sick* means a wild free-roaming horse or burro with failing health, infirmness, or disease from which there is little chance of recovery.

(13) *Wild free-roaming horses and burros* mean all unbranded and unclaimed horses and burros and their progeny that have used lands of the National Forest System on or after December 15, 1971, or do hereafter use these lands as all or part of their habitat, but does not include any horse or burro introduced onto the National Forest System on or after December 15, 1971, by accident, negligence, or willful disregard of private ownership. Unbranded, claimed horses and burros for which the claim is found to be erroneous, are also considered as wild and free-roaming if they meet the criteria above.

(14) *Wild-horse and burro range* means an area of National Forest System specifically so designated by the Chief, Forest Service, from wild horse and burro territory, for the purpose of sustaining an existing herd or herds of wild free-roaming horses and burros, provided the range does not exceed known territorial limits and is devoted principally, but not necessarily exclusively, to the welfare of the wild horses and burros, in keeping with the multiple-use management concept for the National Forest System.

(15) *Wild horse and burro territory* means lands of the National Forest System which are identified by the Chief, Forest Service, as lands which were territorial habitat of wild free-

roaming horses and/or burros at the time of the passage of the Act.

§ 222.21 Administration of wild free-roaming horses and burros and their environment.

(a) The Chief, Forest Service, shall:

(1) Administer wild free-roaming horses and burros and their progeny on the National Forest System in the areas where they now occur (wild horse and burro territory) to maintain a thriving ecological balance considering them an integral component of the multiple use resources, and regulating their population and accompanying need for forage and habitat in correlation with uses recognized under the Multiple-Use Sustained Yield Act of 1960 (70 Stat. 215; 16 U.S.C. 528-531);

(2) Provide direct administration for the welfare of wild free-roaming horses and burros that are located on the National Forest System by use of the Forest Service organization rather than by the granting of leases and permits for maintenance of these animals to individuals and organizations;

(3) Establish wild horse and burro territories in accordance with the Act and continue recognition of such territories where it is determined that horses and/or burros will be recognized as part of the natural system, and designate areas within these territories as a specific wild horse and burro range in those situations where he determines such designation as especially fitting to meet the purposes of the Act and the Multiple Use Sustained-Yield Act, after consultation with the appropriate State agencies where such range is proposed and with the National Advisory Board;

(4) Analyze each wild horse or burro territory and, based on the analysis, develop and implement a management plan, which analysis and plans will be updated, whenever needed, as determined by conditions on each territory;

(5) Maintain a current inventory of wild free-roaming horses and burros on each territory to determine whether and where excess animals exists;

(6) Based on paragraphs (a) (4) and (5) of this section, determine appropriate management levels, whether action should be taken to remove excess animals and what actions are appropriate to achieve the removal or destruction of excess animals; and

(7) In making determinations cited in this section, the authorized officer shall consult with the U.S. Fish and Wildlife Service, wildlife agencies in the State, individuals and organizations independent of Federal or State Government recommended by the National Academy of Sciences, and any other individual or organizations determined to have scientific expertise or special knowledge of wild horse and burro protection, wildlife management and animal husbandry as related to range management.

§ 222.22 Ownership claims.

(a) Any person claiming ownership under State branding and estray laws of branded or unbranded horses or burros within a wild horse or burro territory or range on the National Forest System where such animals are not authorized must present evidence of ownership to justify a roundup before permission will be granted to gather such animals. Claims of ownership with supporting evidence were required to be filed during a claiming period which expired November 15, 1973. Unauthorized privately owned horses or burros entering the National Forest System after November 15, 1973, which become intermingled with wild horses or burros, may be claimed by filing an application with the District Ranger. All authorizations to gather claimed animals shall be in writing in accordance with instructions as the Chief, Forest Service, may prescribe. After such public notice as an authorized officer deems appropriate to inform interested parties, gathering operations may be authorized. The authorization shall provide that the gathering or roundup be consistent with regulations, and will (1) establish a specific reasonable period of time to allow the gathering of claimed animals and (2) stipulate other conditions, including visual observation by Forest Service personnel deemed necessary to ensure humane treatment of associated wild free-roaming horses and burros and to protect other resources involved.

(b) Prior to removal of claimed animals which have been captured from the National Forest System, claimants shall substantiate their claim of ownership in accordance with whatever criteria are cooperatively agreed to between the Forest Service and the State agency administering the State estray laws. In the absence of an agreement, ownership claims shall be substantiated in accordance with State law and subject to approval of the Forest Service.

§ 222.23 Removal of other horses and burros.

Horses and burros not within the definition in § 222.20(b)(13) which are introduced onto Wild Horse and Burro Territories or ranges after December 15, 1971, by accident, negligence, or willful disregard of private ownership, and which do not become intermingled with wild free-roaming horses or burros shall be considered as unauthorized livestock and treated in accordance with provisions in 36 CFR 261.7 and 262.2.

§ 222.24 Use of helicopters, fixed-wing aircraft and motor vehicles.

The Chief, Forest Service, is authorized to use helicopters, fixed-wing aircraft, and motor vehicles in a manner that will ensure humane treatment of wild free-roaming horses and burros as provided by the following paragraphs:

(a) Prior to using helicopters in capture operations and/or using motor vehicles for the purpose of transporting captured animals, a public meeting will be held in the proximity of the territory where the capture operation is proposed.

(b) Helicopters may be used in all phases of the administration of the Act including, but not limited to, inventory, observation, surveillance, and capture operations. In capture operations, helicopters may be used to locate the animals involved to assist ground crews in moving the animals and for related purposes, such as, to transport personnel and equipment. The condition of the animals shall be continuously observed by the authorized officer and, should signs of harmful stress be noted, the source of stress shall be removed so as to allow recovery. Helicopters may be used in roundups or other capture operations subject to the following procedures.

(1) Helicopters shall be used in such a manner that bands or herds will tend to remain together.

(2) Horses or burros will not be moved at a rate which exceeds limitations set by the authorized officer who shall consider terrain, weather, distance to be traveled, and condition of the animals.

(3) Helicopters shall be used to observe the presence of dangerous areas and may be used to move animals away from hazards during capture operations.

(4) During capture operations, animals shall be moved in such a way as to prevent harmful stress or injury.

(5) The authorized officer shall supervise all helicopter uses as follows:

(i) Have means to communicate with the pilot and be able to direct the use of the helicopter; and

(ii) Be able to observe effects of the use of the helicopters on the well-being of the animals.

(c) Fixed-wing aircraft may be used for inventory, observation, and surveillance purposes necessary in administering the Act. Such use shall be consistent with the Act of September 8, 1959, as amended (18 U.S.C. 41 *et seq.*). Fixed-wing aircraft shall not be used in connection with capture operations except as support vehicles.

(d) Motor vehicles may be used in the administration of the Act except that such vehicles shall not be used for driving or chasing wild horses or burros in capture operations. Motor vehicles may also be used for the purpose of transporting captured animals subject to the following humane procedures.

(1) Such transportation shall comply with appropriate State and Federal laws and regulations applicable to humane transportation of horses and burros.

(2) Vehicles shall be inspected by an authorized officer prior to use to ensure vehicles are in good repair and of adequate rate capacity.

(3) Vehicles shall be carefully operated to ensure that captured animals are transported without undue risk or injury.

(4) Where necessary and practical, animals shall be sorted as to age, temperament, sex, size, and condition so as to limit, to the extent possible, injury due to fighting and trampling.

(5) The authorizing officer shall consider the condition of the animals, weather conditions, type of vehicle, and distance to be traveled when planning for transportation of captured animals.

(6) Unless otherwise approved by the authorized officer, the transportation of wild free-roaming horses and burros shall be limited in sequence, to a maximum of 24 hours in transit followed by a minimum of 5 hours of on-the-ground rest with adequate feed and water.

§ 222.25 Protection of wild free-roaming horses and burros when they are upon other than the National Forest System or public lands.

Individual animals and herds of wild free-roaming horses and burros will be under the protection of the Chief, Forest Service, even though they may thereafter move to lands of other ownership or jurisdiction as a part of their annual territorial habitat pattern or for other reasons. The Chief will exercise surveillance of these animals through the use of cooperative agreements and as otherwise authorized by law and act immediately through appropriate administrative or criminal and civil judicial procedures to provide them the protective measures of the Act at any time he has cause to believe its provisions are being violated.

§ 222.26 Removal of wild free-roaming horses and burros from private lands.

Owners of land upon which wild free-roaming horses and burros have strayed from the National Forest System may request their removal by calling the nearest office of either the Forest Service or Federal Marshall.

§ 222.27 Maintenance of wild free-roaming horses and burros on privately-owned lands.

Owners of land who wish to maintain wild free-roaming horses and burros which have strayed onto their lands from the National Forest System may do so by notifying the nearest office of the Forest Service in a timely fashion and providing such information on a continuing basis as the Chief, Forest Service, may require. Such owners shall protect the wild free-roaming horses and burros on their lands. They may not, in so maintaining these animals, impede their return to National Forest System lands unless authorized by agreement with the Forest Service.

§ 222.28 Agreements.

The Chief, Forest Service, may enter into agreements as he deems necessary to further the protection, management, and control of wild free-roaming horses and burros.

§ 222.29 Relocation and disposal of animals.

(a) The Chief, Forest Service, shall, when he determines over-population of wild horses and burros exists and removal is required, take immediate necessary action to remove excess animals from that particular territory. Such action shall be taken until all excess animals have been removed so as to restore a thriving natural ecological balance to the range, and protect the range from deterioration associated with over-population.

(b) No person except an authorized Forest Service officer or his agent shall destroy, remove, or relocate any wild free-roaming horse or burro located on the National Forest System.

(c) Wild horses and burros shall be relocated or removed in the following order of priority:

(1) In the most humane manner possible, sick, lame, or old animals shall be destroyed;

(2) Relocate animals to other National Forest System lands which were identified as 1971 wild horse or burro territory, providing suitable habitat exists and relocation of animals will not jeopardize vegetation condition;

(3) Relocate animals to other federally-owned lands which were identified as 1971 wild horse or burro occupied lands, providing suitable habitat exists and relocation of animals will not jeopardize vegetation condition and animals are requested by the appropriate land manager having jurisdiction;

(4) Place animals under private maintenance and care agreements where there is an adoption demand by qualified individuals, groups, or Government agency, and for which there is assurance of humane treatment and care, provided not more than four animals are placed under private maintenance and care agreements per year to any individual, organization, or government agency unless there is a determination expressed otherwise in writing, by an authorized Forest Service Officer; and

(5) Excess animals, for which an adoption demand by qualified applicants does not exist, shall be destroyed in the most humane manner possible, and if several methods are equally humane, select the most cost efficient.

(d) Where excess animals have been placed under private maintenance and care agreements after December 15, 1971, as provided for in paragraph (c)(4) of this section, and animals have been provided humane conditions, treatment, and care, for a period of one year, the Chief, Forest Service, may grant title to not more than four animals per year to each individual, organization, or government agency.

(e) The applicants must make written application for title and/or adoption, must be of legal age in the State in which they reside, and must pay fees for adoption and transportation as follows:

(1) The application must be accompanied by a nonrefundable advance payment of $25 by guaranteed remittance. If custody of a wild, free-roaming horse or burro is granted by the authorized Forest Service officer, the advance payment shall be applied against the adoption fee required to be paid at the time the maintenance and care agreement § 222.29(c)(4) is executed.

(2) The Forest Service shall charge an adoption fee of $125 for each horse and $75 for each burro, except that there shall be no adoption fee for an unweaned offspring under 6 months of age accompanying its mother.

(3) Any transportation costs incurred for the transportation of the animal(s) to the point of pickup must be paid before an approved individual, group, or government agency takes custody of the animal(s).

(f) Humane conditions, treatment, and care must have been provided for no less that one year preceding the filing of the application for title. The conveyance of title shall include a written statement by an authorized officer attesting that the animal is in good condition.

[45 FR 24135, Apr. 9, 1980, as amended at 46 FR 42450, Aug. 21, 1981; 48 FR 25188, June 6, 1983]

§ 222.30 Disposal of carcasses.

Carcasses of animals that have lost their status as wild free-roaming horses or burros may be disposed of in any customary manner acceptable under applicable State sanitary statutes including disposal through a rendering plant.

§ 222.31 Loss of status.

Wild free-roaming horses and burros or their remains shall lose their status under the 1971 Wild Horses and Burros Act.

(a) Upon passage of title pursuant to § 222.29 (d) and (e).

(b) Upon transfer to private maintenance and care pursuant to § 222.29(c)(4) and die of natural causes before passage of title;

(c) Upon destruction by an authorized Forest officer pursuant to § 222.29(c)(5).

(d) Upon death by natural causes or accident on the National Forest System or on private lands where maintained thereon pursuant to § 222.27 and disposal is authorized by a Forest officer; and

(e) Upon destruction or death for purposes of or incident to the program authorized in § 222.20(a).

§ 222.32 Use of non-Forest Service personnel.

The Chief, Forest Service, may authorize the use of non-Forest Service personnel to assist in specific situations of short duration.

§ 222.33 Management coordination.

All management activities by the Chief, Forest Service, shall be carried out in consultation with the appropri-

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ate agencies of the State involved. The expert advice of qualified scientists in the fields of biology and ecology shall also be sought in administering wild free-roaming horses and burros. The advice and suggestions of agencies, qualified scientists, and other qualified interest groups shall be made available to the National Advisory Board for their use and consideration. Actions taken in connection with private ownership claims shall be coordinated to the fullest extent possible with the State agency responsible for livestock estray law administration.

§ 222.34 National Advisory Board.

The Chief, Forest Service, shall appoint a representative to attend meetings of the National Advisory Board for Wild Free-Roaming Horses and Burros and to function as prescribed by the Memorandum of Agreement between the Department of the Interior and the Department of Agriculture and the Joint Charter issued by the Secretary of the Interior and the Secretary of Agriculture. Policies and guidelines relative to proposals for the establishment of ranges, adjustments in number, relocation and disposal of animals, and other matters relating generally to the protection, management, and control of wild free-roaming horses and burros shall be presented to the National Advisory Board for recommendations.

§ 222.35 Studies.

The Chief, Forest Service, is authorized and directed to undertake those studies of the habits and habitat of wild free-roaming horses and burros that he may deem necessary. In doing so, he shall consult with the appropriate agencies of the State(s) involved and the National Academy of Sciences.

§ 222.36 Arrest.

Any employee designated by the Chief, Forest Service, shall have the power to arrest without warrant, any person committing in the presence of the employee a violation of the Act and to take such person immediately for examination or trial before an officer or court of competent jurisdiction. Any employee so designated shall have power to execute any warrant or other process issued by an officer or court of competent jurisdiction to enforce the provisions of the Act.

Subpart C—Grazing Fees

Authority: 16 U.S.C. 551; 31 U.S.C. 483A; 43 U.S.C. 1901; E.O. 12548, 51 FR 1986 Comp., p. 188.

Source: 44 FR 24843, Apr. 27, 1979, unless otherwise noted.

§ 222.50 General procedures.

(a) Fees shall be charged for all livestock grazing or livestock use of National Forest system lands, or other lands under Forest Service control. An exception is livestock authorized free of charge under provisions of § 222.3(c)(2)(ii) (B) through (G).

(b) Guiding establishment of fees are the law and general governmental policy as established by Bureau of the Budget (now, Office of Management and Budget) Circular A-25 of September 23, 1959, which directs that a fair market value be obtained for all services and resources provided the public through establishment of a system of reasonable fee charges, and that the users be afford equitable treatment. This policy precludes a monetary consideration in the fee structure for any permit value that may be capitalized into the permit holder's private ranching operation.

(c) A grazing fee shall be charged for each head month of livestock grazing or use. A head month is a month's use and occupancy of range by one animal, except for sheep or goats. A full head month's fee is charged for a month of grazing by adult animals; if the grazing animal is weaned or 6 months of age or older at the time of entering National Forest System lands; or will become 12 months of age during the permitted period of use. For fee purposes 5 sheep or goats, weaned or adult, are equivalent to one cow, bull, steer, heifer, horse, or mule.

(d) No additional charge will be made for the privilege of lambing upon National Forest System lands, or other lands under Forest Service control.

(e) Transportation livestock may be charged for at a special rate, and at a minimum established for such use. Fees for horses, mules, or burros associated with management of permitted livestock on an allotment, or for research purposes and administrative studies, and authorized on a charge basis, are determined under provisions of paragraph (b) of this section.

(f) The fees for trailing livestock across National Forest System lands will conform with the rates established for other livestock. Where practicable, fees for trailing permitted livestock will be covered in the regular grazing fee and the crossing period covered in the regular grazing period.

(g) All fees for livestock grazing or livestock use of National Forest System lands or other lands under Forest Service control are payable in advance of the opening date of the grazing period, entry, or livestock use unless otherwise authorized by the Chief, Forest Service.

(h) Unauthorized grazing use rate will be determined by establishing a base value without giving consideration for those contributions normally made by the permittee under terms of the grazing permit. The base will be adjusted annually by the same indexes used to adjust the regular fee. This rate will also apply to excess number of livestock grazing by permittees; to livestock grazed outside the permitted grazing season; or to livestock grazed under an unvalidated permit.

(i) Refunds or credits may be allowed under justifiable conditions and circumstances as the Chief, Forest Service, may specify.

(j) The fee year for the purpose of charging grazing fees will be March 1 through the following February.

(k) The data year for the purpose of collecting beef cattle price data for computing indexes will be November 1 through the following October and apply to the following fee year.

[44 FR 24843, Apr. 27, 1979, as amended at 46 FR 42450, Aug. 21, 1981; 53 FR 2984, Feb. 2, 1988]

§ 222.51 National Forests in 16 Western States.

(a) Grazing fees are established on lands designated National Forests and Land Utilization Projects in the 16 contiguous Western States of Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming. (National Grasslands are excluded, see § 222.52.)

(b) Notwithstanding the provisions of § 222.50, paragraph (b), the calculated grazing fee for 1988 and subsequent grazing fee years represents the economic value of the use of the land to the user and is the product of multiplying the base fair market value of $1.23 by the result of the annual Forage Value Index, added to the sum of the Beef Cattle Price Index minus the Prices Paid Index and divided by 100; provided, that the annual increase or decrease in such fee for any given year shall be limited to not more than plus or minus 25 percent of the previous year's fee, and provided further, that the fee shall not be less than $1.35 per head per month. The indexes used in this formula are as follows:

(1) Forage Value Index means the weighted average estimate of the annual rental charge per head per month for pasturing cattle on private rangelands in the 11 Western States (Arizona, California, Colorado, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, Washington, and Wyoming) (computed by the National Agricultural Statistics Service) from the June Enumerative Survey) divided by $3.65 per head month and multiplied by 100;

(2) Beef Cattle Price Index means the weighted average annual selling price for beef cattle (excluding calves) in the 11 Western States (Arizona, California, Colorado, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, Washington, and Wyoming) (computed by the National Agricultural Statistics Service) for November through October (computed by the National Agricultural Statistics Service) divided by $22.04 per hundred weight and multiplied by 100; and

(3) Prices Paid Index means the following selected components from the National Agricultural Statistics Service "Annual National Index of Prices Paid by Farmers for Goods and Services" adjusted by the weights indicated in parentheses to reflect livestock

production costs in the Western States:

1. Fuels and Energy (14.5);
2. Farm and Motor Supplies (12.0);
3. Autos and Trucks (4.5);
4. Tractors and Self-Propelled Machinery (4.5);
5. Other Machinery (12.0);
6. Building and Fencing Materials (14.5);
7. Interest (6.0);
8. Farm Wage Rates (14.0);
9. Farm Services (18.0).

[44 FR 24843, Apr. 27, 1979, as amended at 53 FR 2984, Feb. 2, 1988]

§ 222.52 National Grasslands.

Grazing fees for National Grasslands will be established under concepts and principles similar to those in § 222.51(b).

§ 222.53 Grazing fees in the East—noncompetitive procedures.

(a) *Scope*. Except as provided in § 222.54 of this subpart, the fee charged for commercial livestock grazing use and occupancy on National Forest System (NFS) lands in the States of New York, Missouri, Vermont, West Virginia, and in the Southern Region shall be determined through noncompetitive, fair market value procedures. These rules do not apply to grazing fees on National Forest System lands in Oklahoma or National Grasslands in Texas. Grazing permits under the noncompetitive fee method in the East are subject to the rules governing grazing permit administration in Subpart A of this part.

(b) *Applicability*. The rules of this section apply to the establishment of grazing fees for existing permittees in the Eastern and Southern Regions on National Forest System lands, including grazing associations in New York and Missouri as of March 1, 1990, to any livestock on-and-off permits defined in Subpart A of this part; and to any allotments advertised for competitive bidding which were not bid on (§ 222.54(h)). Noncompetitive permits vacated or terminated by an existing permittee and any new allotments created after the effective date of this rule shall be offered on a competitive bid basis as specified in § 222.54 of this subpart. As provided in subpart A of this part, holders of term permits have first priority for receipt of a new permit.

(c) *Fee System*. The grazing fee charged under this section shall be based on fair market value, as determined by: Using comparable private grazing lease rates, adjusted for the difference in the costs of grazing comparable private leased lands and National Forest System lands, or by reference to prevailing prices in competitive markets for other Federal or State leased grazing lands that are the same or substantially similar to grazing lands offered or administered by the Forest Service in the East with comparability adjustments as appropriate. Comparable grazing lease rates shall be adjusted for the difference between the total costs of operating on leased grazing lands and the total costs (other than grazing fee costs) of operating on National Forest System lands.

(1) *Establishing Base Grazing Value*. (i) The Chief of the Forest Service, or an authorized officer to whom such authority has been delegated, shall determine an estimated base market value of grazing use and occupancy on National Forest System lands in the Eastern States for the following designated subregions:

(A) Corn Belt (Illinois, Indiana, Missouri, and Ohio);

(B) Lake States (Michigan, Minnesota, and Wisconsin);

(C) Northeast (Maine, New Hampshire, New York, Pennsylvania, and Vermont);

(D) Appalachia (Kentucky, North Carolina, Tennessee, Virginia, and West Virginia);

(E) Southeast/Delta (Alabama, Arkansas, Georgia, Louisiana, Mississippi, South Carolina, and Texas); and

(F) Florida.

(ii) The Chief or authorized officer shall revise or update estimated market values of grazing use and occupancy, as necessary to respond to significant changes in the agricultural economy in the East, and to ensure that fees represent fair market value.

(iii) The Chief, or an authorized officer to whom authority has been delegated, where sufficient market data exist, may establish the base grazing value for grazing allotments using comparable, local lease rates for private grazing lands.

(2) *Annual Adjustment of Base Grazing Value.* To maintain currency with the private grazing lease market, the respective base grazing value(s) established for grazing permits under this section shall be annually adjusted through a hay price index, by respective subregion. The hay price index means the weighted average selling price of "other baled hay," computed by the National Agricultural Statistics Service of the U.S. Department of Agriculture, by designated State and subregion. This index shall be based on 3-year average hay prices and annually reflect the percentage change in the cost of alternative livestock feed.

(3) *Computation of Annual Grazing Fee.*—(i) *Annual Fee Basis.* The annual grazing fee shall equal the base grazing value, adjusted by the current period's hay price index, less the value of any agency required range improvements.

(ii) *Grazing Fee Credits for Range Improvements.* Any requirements for permittee construction or development of range improvements shall be identified through an agreement and incorporated into the grazing permit, with credits for such improvements to be allowed toward the annual grazing fee. Fee credits shall be allowed only for range improvements which the Forest Service requires an individual permittee to construct or develop on a specific allotment to meet the management direction and prescriptions in the relevant forest land and resource management plan and allotment management plan. These improvements must involve costs which the permittee would not ordinarily incur under the grazing permit, must be of tangible public benefit, and must enhance management of vegetation for resource protection, soil productivity, riparian, watershed, and wetland values, wildlife and fishery habitat, or outdoor recreation values. Maintenance of range improvements specified in allotment management planning documents or the grazing permit, and other costs incurred by the permittee in the ordinary course of permitted livestock grazing, do not qualify for grazing fee credits.

(4) *Implementation.* The grazing fee formula provided by this section shall be used to calculate fees for the 1990 grazing fee year. Where implementation would raise fees, the increase shall be phased in over a 5-year period. Full fair market value will be reached in 5 years, beginning in 1990.

[55 FR 2650, Jan. 26, 1990]

§ 222.54 Grazing fees in the East—competitive bidding.

(a) *General Procedures.*—(1) *Applicability.* The rules of this section apply to grazing fees for any allotment established or vacated on National Forest System lands in the Eastern or Southern Regions, as of February 26, 1990 as well as to grazing fees for existing allotments for such lands that have already been established under competitive procedures as of the date of this rule. Permits offered for competitive bidding in the East are subject to the rules governing grazing permit administration in subpart A of this part. The rules of this section do not apply to negotiated livestock use permits or permits with on-and-off grazing provisions as authorized in subpart A of this part. Holders of term permits have first priority for receipt of a new term grazing permit in accordance with subpart A of this part. These rules also do not apply to grazing fees on National Forest System lands in Oklahoma or National Grasslands in Texas.

(2) *Allowable Bidders.* Bids for grazing permits shall be accepted from individuals, partnerships, grazing associations (formed after February 26, 1990), joint ventures, corporations, and organizations.

(b) *Establishment of Minimum Bid Price.* Authorized officers shall establish a minimum bid price for each available allotment as described in § 222.53 of this subpart.

(c) *Prospectus.* (1) At such time as allotments are vacated, as new allotments are established, or as existing competitively bid permits expire, the authorized officer shall prepare and advertise a prospectus for those allotments on which grazing will be permitted.

(2) The prospectus shall include the terms and conditions of occupancy and use under the grazing permit to be issued, as well as document existing improvements and their condition. The prospectus shall also disclose the following:

(i) Estimated market value of the forage per head month of grazing use;

(ii) The minimum bid price the agency will accept;

(iii) Any required range improvements; and

(iv) The minimum qualifications that applicants must meet to be eligible for a permit.

(3) Copies of the applicable grazing permit, allotment management planning documents and allotment maintenance requirements, and the latest annual permittee instructions shall be made available to all prospective bidders upon request.

(d) *Submission of bid.* Each applicant shall submit an application for the grazing permit, along with a sealed bid for the grazing fee, and a bid deposit of 10 percent of the total amount of the bid.

(e) *Qualifications and Deposit Refunds.* Upon opening applicants bids, the authorized officer shall determine whether each bidder meets the qualifications to hold a permit as set forth in Subpart A of this part; and shall refund the deposit to any applicant who is not qualified or who does not offer the high bid.

(f) *Permit Issuance.* The authorized officer shall issue the grazing permit to the qualified high bidder, except as provided in paragraphs (f)(1) and (2) of this section. The successful bidder receives the privilege of obtaining or renewing a grazing permit and is billed for the occupancy offered and forage sold.

(1) *Priority for Reissuance.* On allotments where a current permit is expiring and competition has been held on a new grazing permit, the current grazing permittee shall have priority for retaining the permit. Accordingly, an applicant who holds the permit on the allotment under bid, who has a satisfactory record of performance under that permit, and who is not the higher bidder for the future grazing privileges in the specified allotment shall be offered the opportunity to match the high bid and thereby retain the permit. Should there be more than one existing permittee in the allotment under bid, each shall be offered the option of meeting the high bid; if only one current permittee opts to meet the high bid, the remaining allowable grazing use, if any, shall be awarded to the initial high bidder.

(2) *Identical Bids.* In cases of identical bids, the selection of the successful applicant shall be made through a drawing.

(g) *Computation of Successful Bidder's Annual Fee.*—(1) *Annual Fee Basis.* The highest bid received shall establish the base grazing value in the initial year of the grazing permit for each allotment offered. The annual grazing fee shall equal the base grazing value, adjusted by the current period's hay price index for the relevant subregion as described in § 222.53(c)(1), and (c)(3), less the value of any agency required range improvements. This hay price index shall be based on 3-year average hay prices and annually reflect the percent change in the cost of alternative livestock feed.

(2) *Grazing Fee Credits for Range Improvements.* Any requirements for permittee construction or development of range improvements shall be identified through an agreement and incorporated into the grazing permit, with credits for such improvements to be allowed toward the annual grazing fee. Fee credits shall be allowed only for range improvements which the Forest Service requires an individual permittee to construct or develop on a specific allotment to meet the management direction and prescriptions in the relevant forest land and resource management plan and allotment management plan. These improvements must involve costs which the permittee would not ordinarily incur under the grazing permit, must be of tangible public benefit, and must enhance management of vegetation for resource protection, soil productivity, riparian, watershed, and wetland values, wildlife and fishery habitat, or outdoor recreation values. Maintenance of range improvements specified in allotment management planning documents or the grazing permit, and other costs incurred

by the permittee in the ordinary course of permitted livestock grazing, do not qualify for grazing fee credits.

(h) *No Bids Received.* If qualified sealed bids are not received, the authorized officer reserves the right to conduct an oral auction using the minimum bid price established under paragraph (b) of this section or to establish grazing fees through noncompetitive grazing fee procedures specified in § 222.53 of this subpart.

[55 FR 2651, Jan. 26, 1990]

PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER

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AUTHORITY: 90 Stat. 2958, 16 U.S.C. 472a; 98 Stat. 2213, 16 U.S.C. 618, unless otherwise noted.

SOURCE: 42 FR 28252, June 2, 1977, unless otherwise noted. Redesignated at 49 FR 2760-2761, Jan. 23, 1984.

Suhpart A--General Provisions

§ 223.1 Authority to sell timber.

Trees, portions of trees, and other forest products on National Forest System lands may be sold for the purpose of achieving the policies set forth in the Multiple-Use Sustained-Yield Act of 1960, as amended (74 Stat. 215; 16 U.S.C. 528-531), and the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended (88 Stat. 476; as amended, 16 U.S.C. 1600-1614), and the Program thereunder.

§ 223.2 Disposal of timber for administrative use.

Trees, portions of trees, or other forest products in any amount on National Forest System lands may be disposed of for administrative use, by sale or without charge, as may be most advantageous to the United States, subject to the maximum cut fixed in accordance with established policies for management of the National Forests. Such administrative use shall be limited to the following conditions and purposes:

(a) For construction, maintenance or repair of roads, bridges, trails, telephone lines, fences, recreation areas or other improvements of value for the protection or the administration of Federal lands.

(b) For fuel in Federal camps, buildings and recreation areas.

(c) For research and demonstration projects.

(d) For use in disaster relief work conducted by public agencies.

(e) For disposal when removal is desirable to protect or enhance multiple-use values in a particular area.

§ 223.3 Sale of seized material.

Seized material (trees, portions of trees or other forest products cut in trespass from National Forest System lands) may be sold to the highest bidder under specific authorization from the Regional Forester. If advertisement is impractical, sales of material with an appraised value of less than $10,000 will be made on informal bids.

§ 223.4 Exchange of trees or portions of trees.

Trees or portions of trees may be exchanged for land under laws authorizing the exchange of National Forest timber. Cutting of exchange timber must comply with the purposes cited in § 223.1.

(42 Stat. 465, 16 U.S.C 485; 43 Stat. 1215, 16 U.S.C. 516)

§ 223.5 Scope of free use granted to individuals.

(a) Free use may be granted to individuals for firewood for personal use, except that such use may be limited to bona fide settlers, miners, residents and prospectors living within or immediately adjacent to the National Forest when the available supply is insufficient to meet the total demand. Free use may be granted to such bona fide settlers, miners, residents and prospectors for minerals, for fencing, building, mining, prospecting and domestic purposes.

(Sec. 1, 30 Stat. 35, as amended; 16 U.S.C. 477, 551)

(b) Free use will be granted individuals primarily to aid in the protection and silvicultural improvement of the forests. Except in unusual cases, the material will be restricted to dead, insect-infested, or diseased timber, logging debris, and thinnings. Other material may be granted in unusual cases where its refusal would cause unwarranted hardship. Where limited supply or other conditions justify such action, the free use of green material may be refused.

§ 223.6 Cutting and removal of timber in free-use areas.

Supervisors may designate portions or all of a National Forest as free-use areas where such action is compatible with land management plans and shall give public notice of their action. Within such free-use areas, any dead timber or any green timber previously marked or designated by forest officers may be cut and removed for personal use for domestic purposes. Cutting and removal of timber in free-use areas shall be in accordance with such rules as may be prescribed by the district ranger to prevent fires, minimize damage to uncut trees and other resources, and to avoid confusion among users.

[42 FR 28252, June 2, 1977, as amended at 44 FR 73029, Dec. 17, 1979. Redesignated at 49 FR 2760, Jan. 23, 1984]

§ 223.7 Permission for free use of timber outside free-use areas.

Similar material may be cut outside of a free-use area without permit in cases of emergency, but the person taking such material shall promptly notify the district ranger. Small quantities of material needed by transients while in the forest may also be taken without permit; subject to such rules as may be prescribed pursuant to § 261.70. In all other cases permits will be required for green material.

§ 223.8 Delegations of authority to approve free use by individuals.

(a) Forest officers whom the supervisor may designate are authorized to grant free use of timber to individuals up to $20 in value in any one fiscal year. Supervisors may grant permits for material not exceeding $100 in value. Regional Foresters may approve permits for larger amounts, and in times of emergency may delegate authority to supervisors for not over $500 in value. Prior review by the Chief of the Forest Service will be given if the amount involved exceeds $5,000 in value.

(b) Regional Foresters may authorize supervisors to permit the removal of specific classes of material without scaling or measurement.

§ 223.9 Free use to owners of certain mining claims.

Free use will be granted to an owner of a mining claim located subsequent to July 23, 1955, or of a mining claim which is otherwise subject to Section 4 of the Act of July 23, 1955 (69 Stat. 367), if at any time said claim owner requires more timber for his mining operations, in connection with that claim, than is available on that claim because of Forest Service timber disposal therefrom subsequent to location of that claim. He will be granted, free of charge, timber from the nearest National Forest land which is ready for harvesting under the applicable management plan, substantially equivalent in kind and quantity to that estimated by the Forest Service to have been cut under Forest Service authorization from the claim subsequent to its location. Forest officers may be delegated authority to grant amounts of timber not in excess of those which these officers are authorized to sell in commercial sales.

(Sec. 4, 69 Stat. 368, 16 U.S.C. 612)

§ 223.10 Free use to Alaskan settlers, miners, residents, and prospectors.

Bona fide settlers, miners, residents, and prospectors for minerals in Alaska may take free of charge green or dried timber from the National Forests in Alaska for personal use but not for sale. Permits will be required for green saw timber. Other material may be taken without permit. The amount of material granted to any one person in 1 year shall not exceed 10,000 board feet of saw timber and 25 cords of wood, or an equivalent volume in other forms. Persons obtaining materials shall, on demand, forward to the supervisor a statement of the quantity taken and the location from which it was removed.

(Sec. 1, 30 Stat. 35, 16 U.S.C. 477)

§ 223.11 Free use to other Federal agencies.

(a) National Forest timber will be granted free of charge to other branches of the Federal Government when authorized by law. Permits may be approved by forest officers for amounts not greater than they are otherwise authorized to sell.

(b) Permits for timber issued hereunder shall be in accordance with the conditions prescribed in § 223.30. The permittee may be required to report to the supervisor the amount of timber, by species, actually cut or may be required to furnish scalers for work under the direction of the forest officers in charge or, if authorized, to provide funds for the employment by the Forest Service of scalers to scale or measure the timber cut. The permittee may be required to dispose of the slash as cutting proceeds, or to employee people to work under the direction of a forest officer in disposing of the slash, or, if authorized, to provide funds for the employment of people for slash disposal under the direction of a forest officer.

(38 Stat. 1100, as amended; 16 U.S.C. 492)

§ 223.12 Permission to cut, damage, or destory trees without advertisement.

Permission may be granted to cut, damage, or destroy trees, portions of trees, or other forest products on National Forest System lands without advertisement when necessary for the occupancy of a right-of-way or other authorized use of National Forest System land. Payment for timber of merchantable size and quality will be required at its appraised value, but at not less than applicable minimum prices established by Regional Foresters, and payment will be required for young growth timber below merchantable size at its damage appraisal value. Payment will not be required:

(a) For timber necessarily killed or cut in connection with land uses which are of substantial benefit to the National Forests;

(b) For timber necessarily killed or cut and used by the permittee which would have been granted free under other applicable regulations; or

(c) For timber which will be cut by the permittee which the Forest Service retains for sale in log or other product form.

(Sec. 1, 30 Stat. 35, as amended, 16 U.S.C. 551)

§ 223.13 Compliance.

Forest officers authorizing free use shall ensure that such use is in compliance with applicable land management plans and is conducted in a manner which protects National Forest System resource values.

(92 Stat. 1301, Pub. L. 95-465)

§ 223.14 Where timber may be cut.

(a) The cutting of trees, portions of trees or other forest products may be authorized on any National Forest System lands, except for:

(1) Timber reserved by a grantor of land, during the life of such reservation.

(2) Timber reserved from cutting under other regulations.

(3) Timber on unpatented mining claims located prior to July 23, 1955, unless the claimant has executed a waiver pursuant to section 6 of the Act of July 23, 1955 (69 Stat. 367), or unless pursuant to a proceeding under Section 5 of that Act, the claimant has failed to file a verified statement or has failed to establish the validity and effectiveness of his asserted rights.

(4) Timber on lands identified in land management plans as not suited for timber production, except that salvage sales or sales necessitated to protect other multiple-use values may be made.

(b) The cutting of timber on mining claims shall be conducted in such manner as not to endanger or materially interfere with prospecting, mining or processing operations.

(c) Timber on an unpatented claim to which the United States does not otherwise have disposal rights may be disposed of with the written consent of the claimant, or, in emergencies without the consent of the claimant.

(d) Timber on an unpatented claim may be cut by the claimant only for the actual development of the claim or for uses consistent with the purposes for which the claim was entered. Any severance or removal of timber, other than severance or removal to provide clearance, shall be in accordance with plan of operations required by Part 252 of this chapter, and with sound principles of forest management.

(e) With prior approval by the Regional Forester, timber on lands under option by the United States or on offered lands included in an approved land exchange agreement may be sold. Before the sale is made, a cooperative agreement must be made with the owner of the land authorizing the Forest Service to conduct the sale and providing for return of stumpage receipts to the owner if title to the land is not accepted by the United States.

(f) With prior approval by the Regional Forester, cutting of exchange timber described in § 223.4 may be authorized in advance of the acceptance of title to the non-Federal land offered in exchange.

Subpart B—Timber Sale Contracts

CONTRACT CONDITIONS AND PROVISIONS

§ 223.30 Consistency with plans, environmental standards, and other management requirements.

The approving officer will insure that each timber sale contract, permit or other authorized form of National Forest timber disposal is consistent with applicable land and resource management plans and environmental quality standards and includes, as appropriate, requirements for:

(a) Fire protection and suppression;

(b) Protection of residual timber;

(c) Regeneration of timber as may be made necessary by harvesting operations;

(d) Minimizing increases in soil erosion;

(e) Providing favorable conditions of water flow and quality;

(f) Utilization of the timber resource to provide for the optimum practical use of the wood material as may be obtained with available technology, considering opportunities to promote more efficient wood utilization, regional conditions and species characteristics;

(g) Reduction of the likelihood of loss to destructive agencies; and

(h) Minimizing adverse effects on, or providing protection for and enhancing other National Forest resources, uses and improvements.

§ 223.31 Duration of contracts.

Sale contracts shall not exceed 10 years in duration, unless there is a finding by the Chief, Forest Service, that better utilization of the various forest resources (consistent with the provisions of the Multiple-Use Sustained-Yield Act of 1960) will result.

§ 223.32 Timber sale operating plan.

Sale contracts with a term of 2 years or more shall provide for the filing of an operating plan as soon as practicable after execution of the contract, such plan shall be a part of the contract. The plan of operation shall be general in nature, outlining the expected timing and order of sale development, including such major operations as road construction, felling and removal of timber, distribution of timber, and contractual requirements for erosion prevention and slash disposal. The plan of operation and revisions thereto shall be subject to concurrence by the Forest Service.

§ 223.33 Redetermination of stumpage rates and deposits.

Sale contracts exceeding 7 years in duration, and those of shorter duration to the extent found desirable by the approving officer, will provide for the redetermination of rates for stumpage and for required deposits at intervals of not more than 5 years, exclusive of any period allowed for the construction of improvements.

§ 223.34 Advance payment.

Sale contracts shall provide that timber and forest products be paid for in advance of cutting, unless the contract authorizes the purchaser to furnish a payment guarantee satisfactory to the Forest Service. Advance payments found to be in excess of amounts due the United States shall be refunded to the current holder of the contract or to successors in interest. (90 Stat. 2959; 16 U.S.C. 472a.)

[43 FR 38008, Aug. 25, 1978. Redesignated at 49 FR 2761, Jan. 23, 1984]

§ 223.35 Performance bond.

Timber sale contracts may require the purchaser to furnish a performance bond for satisfactory compliance with its terms.

§ 223.36 Volume determination.

(a) Timber sale contracts may provide for volume determination by scaling, measuring, weighing, or counting the logs or other products, or by measuring the trees before cutting. If the contract or permit provides for the determination of volume by tree measurement and the timber has been paid for, the marking or otherwise designating of the tree authorizes cutting and removal. Otherwise no timber cut under any contract shall be removed from the place designated until it has been scaled, measured or counted as provided in the timber sale contract, unless such removal is specifically authorized in the contract.

(b) National Forest timber sold on board foot scale shall be scaled by the Scribner Decimal C Log Rule, or if the advertisement and contract or permit so state, by the International ¼-inch log rule or by the International ¼-inch Decimal log rule. National Forest timber may also be sold by the cubic volume rule or by cords, each as used by the Forest Service.

§ 223.37 Revegetation of temporary roads.

Timber sale contracts, permits and other documents authorizing the cutting or removal of timber or forest products shall require the purchaser to treat temporary roads constructed or used thereunder so as to permit the reestablishment by artificial or natural means, or vegetative cover on the roadway and areas where the vegetative cover was disturbed by the construction or use of the road, as necessary to minimize erosion from the disturbed area. Such treatment shall be designed to reestablish vegetative cover as soon as practicable, but at least within 10 years after the termination of the contract.

§ 223.38 Standards for road design and construction.

Road construction authorized under timber sale contracts, permits and other documents authorizing the cutting or removal of timber or forest products shall be designed to standards appropriate for the intended uses, considering safety, cost of transportation, and impacts on land and resources. If the sale contract provides for road design standards in excess of those needed for the harvest and removal of timber from that sale, including measures to protect adjacent resource values, provision shall be made in the contract for compensating the purchaser for the additional costs, unless the purchaser elects Government construction under section 14(i) of the National Forest Management Act of 1976.

§ 223.39 Revision of contract conditions.

Timber sale contracts, permits and other such instruments, authorizing the harvesting of trees or other forest products, with terms of longer than 2 years, shall provide for revision of contract terms as necessary to make them consistent with guidelines and standards developed to implement section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended, and with land management plans developed or revised thereunder. The contract shall provide, that rates of payment for timber shall be adjusted as necessary to reflect resulting changes, if any, in the value of the timber, resulting from the revision.

§ 223.40 Cancellation for environmental protection or inconsistency with plans.

Timber sale contracts, permits, and other such instruments, authorizing the harvesting of trees or other forest products, with terms of longer than 2 years, shall provide for cancellation in order to prevent serious environmental damage or when they are significantly inconsistent with land management plans adopted or revised in accordance with section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended. Such provision shall provide for reasonable compensation to the purchaser for unrecovered costs incurred under the contract and for the difference between the current contract value and the average value of comparable National Forest timber sold during the preceding 6-month period.

§ 223.41 Payment when purchaser elects government road construction.

Each contract having a provision for construction of specified roads with total estimated construction cost in excess of $20,000 will include a provision to ensure that if the purchaser elects Government road construction, he pays for the timber an amount no less than the sum of estimated road construction cost and base rate value, as defined in § 223.61.

§ 223.42 Transfer of effective purchaser credits.

The Forest Service may permit transfer of unused effective purchaser credit earned after December 16, 1975, from one timber sale account to another timber sale account of the same purchaser within the same National Forest, provided the sale contracts provide procedures for the use of purchaser credit. Approval for transfer shall not be granted for amounts needed to satisfy unfulfilled payment obligations or claims for damages due the United States. Purchaser credit transferred under this paragraph is subject to such additional restrictions as may be necessary for its orderly use.

(Pub. L. 94-154, 89 Stat. 823 (16 U.S.C. 535))

[42 FR 63777, Dec. 20, 1977. Redesignated at 49 FR 2761, Jan. 23, 1984]

§ 223.43 Limitation on amounts of transferred purchaser credit.

(a) The amount of purchaser credit which may be transferred into a given sale shall be limited to the difference between remaining current contract value and the total of:

(1) Remaining base rate value needs,

(2) Salvage sale fund needs plus sale area improvement needs in excess of base rate value needs, and

(3) Total purchaser credit limit on the given sale.

(b) This calculation shall be made as of the date of sale award for sales made on or after January 1, 1978. For sales made prior to January 1, 1978, the calculation shall be made as of December 31, 1977, except that if the amount actually transferred in as of December 31, 1977, exceeds the calculated limit, the actual transfers as of that date shall be the established limit. Purchaser credit earned on a sale and subsequently transferred out may be replaced without regard to the transfer in limit. Sale area improvement needs shall be based on the original sale area betterment plan or revisions thereto approved prior to July 1, 1976. Salvage sale fund needs shall be based on the original salvage sale fund plan.

(Pub. L. 94-154, 89 Stat. 823 (16 U.S.C. 535))

[42 FR 63777, Dec. 20, 1977. Redesignated at 49 FR 2761, Jan. 23, 1984]

§ 223.44 Collection rights on contracts involved in transfer of purchaser credit.

To assure protection of the United States in connection with the implementation of this regulation, contract provisions shall not prevent the Forest Service from carrying out collection rights, authorized by the Federal Claims Collection Act of 1966 (80 Stat. 309), between contracts involved in the transfer of purchaser credit. Such claims against the contract receiving the transferred purchaser credit shall be limited to the amount transferred.

(Pub. L. 94-154, 89 Stat. 823 (16 U.S.C. 535)

[42 FR 63777, Dec. 20, 1977. Redesignated at 49 FR 2761, Jan. 23, 1984]

§ 223.45 Definitions applicable to transfer of purchaser credit.

As used in §§ 223.42 and 223.43, the term *Purchaser* includes any single individual, corporation, company, firm, partnership, joint venture, or other business entity or the successor in interest of any of the foregoing business entities having timber sale contracts on the same National Forest. The term *National Forest* shall be considered as a unit of the National Forest System, regardless of how it was established, which maintains a separate identity with respect to the distribution of receipts earned thereon to the States and counties. The term *Effective Purchaser Credit* means unused purchaser credit which does not exceed current contract value minus base rate value. The term *base rate value* is the sum of the products of base rates and estimated remaining unscaled (unreported on tree measurement contracts) volumes by species of timber included in a timber sale contract.

(Pub. L. 94-154, 89 Stat. 823 (16 U.S.C. 535)

[42 FR 63777, Dec. 20, 1977. Redesignated at 49 FR 2761, Jan. 23, 1984]

§ 223.46 Adjustment of contract termination date.

Timber sale contracts may provide for adjustment of the termination date to provide additional time to compensate for delays in road construction and timber removal due to those causes beyond the purchaser's control, which may include but are not limited to acts of God, acts of the public enemy, acts of the Government, labor disputes, fires, insurrections or floods.

§ 223.47 Date of completion of permanent road construction.

(a) The date of completion of permanent road construction obligations as set forth in the Notice of Sale shall be incorporated into the timber sale contract.

(b) This date is applicable to construction by both the Forest Service and the timber purchaser.

(c) The date is not applicable to roads not needed by the purchaser for timber removal.

(d) The date for completion may be revised, if additional time is needed, under guidelines provided by the Chief, Forest Service, including but not limited to (1) default of contractors or (2) design changes, physical changes, or catastrophic damages which necessitate modification of specified road construction work.

(e) If Forest Service failure to perform results in delay in road completion, the termination date shall be adjusted in accordance with the contract term adjustment provisions of the timber sale contract. If there is substantial delay in performance by the Forest Service, the contract shall provide that rates of payment may be redetermined, at the request of the purchaser, in accordance with guidelines established by the Chief, Forest Service.

(f) If the purchaser retains responsibility for road construction, the date of completion for permanent roads may be modified to conform to the approved plan of operation.

§ 223.48 Reports on export or substitution of unprocessed timber.

Contracts for the sale of unprocessed timber from National Forest System lands located west of the 100th Meridian in the contiguous 48 States and Alaska, advertised after the effective date of this Regulation, shall include provisions implementing 36 CFR

223, Subpart D. Such contracts shall also require purchasers to:

(a) Submit annually, until all unprocessed timber is accounted for, a certified report on the disposition of any unprocessed timber harvested from the sale, including a description of unprocessed timber which is sold, exchanged, or otherwise disposed of to another person and a description of the relationship with the other person;

(b) Submit annually, until all unprocessed timber from the sale is accounted for, a certified report on the sale of any unprocessed timber from private lands in the tributary area which is exported or sold for export; and

(c) Maintain records of all such transactions involving unprocessed timber, and to make such records available for inspection and verification by the Forest Service for up to 3 years after the sale is terminated.

(Approved by the Office of Management and Budget under control number 0596-0021)

(Sec. 14, Pub. L. 94-588, 90 Stat. 2958, as amended (16 U.S.C. 472a))

[45 FR 80528, Dec. 5, 1980. Redesignated at 49 FR 2761, Jan. 23, 1984, and amended at 51 FR 40316, Nov. 6, 1986]

§ 223.49 Downpayment.

(a) The terms listed in this paragraph have the following meaning:

(1) *Total bid value* is the sum of the products obtained by multiplying the rate the purchaser bid for each species by the estimated volume for that species.

(2) *Bid ratio* is the result of dividing the total bid value, minus the amount of the ineffective purchaser credit, by the total advertised value of the sale. *Average bid ratio* is the weighted average of the bid ratios of timber sales on a National Forest.

(3) *Ineffective purchaser credit* is that portion of the credit earned pursuant to a specific Forest Service timber sale contract for construction of specified roads, or as otherwise provided in such contract, that exceeds the current contract value, minus base rate value as defined in that contract.

(4) *Bid premium* is the amount a purchaser bids in excess of the advertised value.

(5) *Affiliate.* Concerns or individuals are affiliates if directly or indirectly, either one controls or has the power to control the other, or a third party controls or has the power to control both. In determining whether or not affiliation exists, the Forest Service shall consider all appropriate factors, including, but not limited to, common ownership, common management, and contractual relationships.

(b) Timber sale contracts shall include provisions that require purchasers to make a downpayment in cash or by application of earned effective purchaser credit at the time a timber sale contract is executed.

(c) The minimum downpayment shall be the equivalent of 10 percent of the total bid value of each sale, except in those areas where the Chief of the Forest Service determines that it is necessary to increase the amount of the downpayment in order to deter speculation.

(1) For sales on National Forests where the average bid ratio has exceeded 1.6 in the previous fiscal year or where the bid ratio on a significant number of timber sales exceeds a 1.6 ratio and the average bid premium on those sales is at least $25 per thousand board feet or equivalent, the amount of the downpayment will be equal to 10 percent of the advertised value, plus 20 percent of the total bid premium, unless increased by the Chief of the Forest Service where the Chief determines it is necessary to deter speculation. In calculating bid ratios and bid premiums for the downpayment requirement the Forest Service will not use the portion of the bid premium that offsets ineffective purchaser credit.

(2) To determine the amount of the downpayment due on a sale where the timber is measured in units other than board feet, the Forest Service shall convert the measure to board feet, using appropriate conversion factors with any necessary adjustments.

(d) A purchaser cannot apply the amount deposited as a downpayment to cover other payments due on that sale until 25 percent of the advertised timber volume has been scaled and paid for on scaled sales, or until 25 percent of the advertised timber volume is shown on the timber sale statement of account to have been cut, removed, and paid for on tree measurement sales.

(e) A purchaser or any affiliate of that purchaser, awarded a Forest Service timber sale contract must meet the additional downpayment requirements of paragraph (g) of this section under the following circumstances:

(1) The purchaser or its affiliate after September 29, 1988 has failed to perform in accordance with the terms of a Forest Service or Bureau of Land Management timber sale contract which results in notification by a Contracting Officer that a contract has expired uncompleted or is terminated for cause; and

(2) The estimated value of the unscaled timber on scaled sales, or the estimated value of the timber outstanding on tree measurement sales, included in those terminated or expired contracts exceeds $100,000, and

(3) Unpaid damages claimed by the Government remain outstanding prior to award of the new sale at issue and corrective action has not been taken to avoid future deficient performance.

(f) A subsequent final determination by the Contracting Officer or by a court of competent jurisdiction that a contract was improperly classified under the criteria in paragraph (e) of this section will result in the refund or credit of any unobligated portion of the amount of downpayment exceeding that required by paragraphs (c) and (d) and the limitations of paragraph (h) on application of downpayment shall no longer apply.

(g) Notwithstanding the provisions of paragraphs (c) and (d) of this section, a purchaser meeting the criteria of paragraph (e) of this section must make a minimum downpayment equal to 20 percent of the total advertised value of that sale, plus 40 percent of the total bid premium. This higher downpayment requirement applies throughout the National Forest System, except in those areas where the Chief of the Forest Service determines, before advertisement of the sale, that another downpayment rate is necessary to achieve the management objectives of the National Forest System.

(1) In calculating bid premiums for the downpayment requirement, the Forest Service shall not include the portion of the bid premium that offsets ineffective purchaser credit.

(2) To determine the amount of the downpayment due on a sale where the timber is measured in units other than board feet, the Forest Service shall convert the measure to board feet, using appropriate conversion factors with any necessary adjustments.

(h) A purchaser subject to the additional downpayment requirements of paragraph (g) of this section cannot apply the amount deposited as a downpayment to other uses until:

(1) *On scaled sales*, the estimated value of the unscaled timber is equal to or less than the amount of the downpayment; or

(2) *On tree measurement sales*, the estimated value remaining to be cut and removed as shown on the timber sale statement of account is equal to or less than the amount of the downpayment.

(i) For the purpose of releasing funds deposited as downpayment by a purchaser subject to paragraph (f) of this section, the Forest Service shall compute the estimated value of timber as follows:

(1) *On scaled sales*, the estimated value of the unscaled timber is the sum of the products obtained by multiplying the current contract rate for each species by the difference between the advertised volume and the volume that has been scaled of that species.

(2) *On tree measurement sales*, the estimated value of the timber outstanding (that not shown on the timber sale statement of account as cut and removed) is the sum of the products obtained by multiplying the current contract rate for each species by the difference between the advertised volume and the volume that has been shown on the timber sale statement to have been cut and removed of the species. The current contract rate for each species is that specified in each Forest Service timber sale contract.

[50 FR 41500, Oct. 11, 1985, as amended at 53 FR 33131, Aug. 30, 1988]

§ 223.50 Midpoint payment.

(a) Timber sale contracts shall include provisions requiring a midpoint payment for all timber sales with 1 year or more between the bid date and termination date. Midpoints shall be determined on the basis of the timber sale contract period remaining after the specified road completion date.

(b) The amount of payments or deposits at the midpoint of the contract term must equal at least 25 percent of the total contract value, including required deposits, at bid date, or 50 percent of the amount of the bid premium, whichever is greater.

[50 FR 41500, Oct. 11, 1985]

§ 223.51 Bid monitoring.

Each Regional Forester shall monitor bidding patterns on timber sales to determine if speculative bidding is occurring or if Purchasers are bidding in such a way that they would be unable to perform their obligations under the timber sale contract. A Regional Forester shall propose to the Chief changes in servicewide timber sale procedures, as they appear necessary, to discourage speculative bidding.

[50 FR 41500, Oct. 11, 1985]

Appraisal and Pricing

§ 223.60 Determining fair market value.

The objective of National Forest timber appraisals is to estimate fair market value. The basic procedure will be analytical appraisal under which stumpage value is a residual value determined by subtracting from the selling value of the products normally manufactured from the timber the sum of estimated operating costs, including costs to the purchaser for construction of roads or other developments needed by the purchaser for removal of the timber, and margins for profit and risk. Costs and product values under the residual value method shall be those of an operator of average efficiency and related to the operating difficulties and to size and quality of the timber. Other valid appraisal methods, including transaction evidence procedures, or independent estimates based on average investments, may be used subject to approval by the Chief, Forest Service. Under the approved procedures, pertinent factors affecting market value shall be considered, including but not limited to, prices paid and valuations established for other purposes for comparable timber. Consideration of such prices and valuation may recognize and adjust for factors which are not normal market influences.

§ 223.61 Establishing minimum stumpage rates.

The Chief, Forest Service, shall establish minimum stumpage rates, i.e., "base rates," for species and products on individual National Forests, or groups of National Forests. Timber shall be sold for appraised value or minimum stumpage rates, whichever is higher. No timber may be sold or cut under timber sale contracts for less than minimum stumpage rates except to provide for the removal of insect-infested, diseased, dead or distressed timber or in accordance with contract provisions specifically providing for catastrophically-affected timber and incidental amounts of material not meeting utilization standards of the timber sale contract. For any timber sale offering where deposits are to be required for reforestation under the Act of June 9, 1930, as amended (46 Stat. 527; 16 U.S.C. 576-576b) which exceed the value of the established minimum stumpage rates, the minimum rates may be increased by the approving officer as necessary to the amount of such required reforestation deposits and a minimum deposit to the Treasury. Minimum rates in timber sale contracts will not be set higher than established minimum rates for purposes other than assuring adequate funds for reforestation.

§ 223.62 Timber purchaser road construction credit.

Appraisal may also establish stumpage value as if unconstructed roads or other developments needed by the purchaser for removal of the timber were in place. When timber is appraised and sold on such basis, *pur-*

chaser credit for road construction, not to exceed the estimated construction cost of such roads or other developments specified in the timber sale contract, shall, when such construction is accomplished by purchaser, be deducted from stumpage payments made by or due from purchaser under the timber sale contract for other than minimum stumpage rates and required deposits for slash disposal and road maintenance. As used in this section *estimated construction costs* means the total cost of constructing all permanent roads specified in the timber sale contract, estimated as if construction is to be accomplished by an independent contractor who is not the timber purchaser. In determining the purchaser credit amount applicable against timber payments, the estimated construction cost may be reduced for the effect of differences in applicable wage rates.

§ 223.63 Advertised rates.

Timber shall be advertised for sale at its appraised value, or its appraised value plus specified road costs. In either event, the advertised rates shall be not less than minimum stumpage rates, except that sales of insect-infested, diseased, dead, or distressed timber may be sold at less than minimum rates when harvest of such timber is necessary to protect or improve the forest or prevent waste of useable wood fiber.

§ 223.64 Appraisal on a lump-sum value or rate per unit of measure basis.

Timber may be appraised and sold at a lump-sum value or at a rate per unit of measure which rate may be adjusted during the period of the contract and as therein specified in accordance with formulas or other equivalent specifications for the following reasons:

(a) Variations in lumber or other product value indices between the price index base specified in the contract and the price index actually experienced during the cutting of the timber;

(b) Variance between advertised rates and rates redetermined by appraisal at dates specified in the contract;

(c) Variance between redetermined rates and rates appropriate for changes in costs or selling values subsequent to the rate redetermination which reduce conversion value to less than such redetermined rates; and

(d) Substantial loss of value due to physical deterioration of green timber or other physical damage to the sale area or access to the timber.

§ 223.65 Appraising value of exchange timber.

The value of exchange timber (§ 223.4) will be determined by the appraisal methods in § 223.60 of this section. Where the residual value method is used, prices paid for comparable timber will be considered and the residual value adjusted accordingly.

§ 223.66 Appraising value of timber for right-of-way or other authorized use.

The value of timber required to be cut for the occupancy of a right-of-way or other authorized use of National Forest System land (§ 223.12) for which payment will be made, will be determined by the appraisal methods in § 223.60. Where the residual value method is used, prices paid for comparable timber will be considered and the residual value adjusted accordingly.

Advertisement and Bids

§ 223.80 When advertisement is required.

Except as otherwise provided in this part each sale in which the appraised value of the timber or other forest products exceeds $10,000 will be made only after advertisement for a period of 30 days or, if in the opinion of the officer authorizing the sale, the quantity, value or other conditions justify, a longer period; and any sale of smaller appraised value will be advertised or informal bids solicited from potential purchasers if, in the judgment of the officer authorizing the sale, such action is deemed advisable.

§ 223.81 Shorter advertising periods in emergencies.

In emergency situations where prompt removal of timber included in a sale is essential to avoid deterioration or to minimize the likelihood of the spread of insects, the approving officer may authorize shortening the formal advertising period to not less than 7 days. In other emergency situations, or for timber sold under 36 CFR 223.2 the Regional Forester or Chief may authorize shortening the formal advertising period to not less than 7 days.

[44 FR 73029, Dec. 17, 1979. Redesignated at 49 FR 2761, Jan. 23, 1984]

§ 223.82 Contents of advertisement.

(a) A timber sale advertisement shall include the following information:

(1) The location and estimated quantities of timber or other forest products offered for sale.

(2) The time and place at which sealed bids will be opened in public or at which sealed bids will be opened in public followed by an oral auction.

(3) A provision asserting the agency's right to reject any and all bids.

(4) The place where complete information on the offering may be obtained.

(5) Notice that a prospectus is available to the public and to interested potential bidders.

(b) For each sale outside of the State of Alaska which includes a provision for purchaser credit for construction of permanent roads with a total estimated construction cost exceeding $20,000, a timber sale advertisement shall also include:

(1) The total estimated construction cost of the permanent roads.

(2) A statement extending to small business concerns qualified for preferential bidding on timber sales, under the Small Business Act, as amended, and the regulations issued thereunder, the option to elect, when submitting a bid, to have all permanent roads constructed by the Forest Service.

(3) Notice that the prospectus referred to in paragraph (a)(5) of this section contains additional information concerning the options to have all permanent roads constructed by the Forest Service.

(c) When timber or other forest products are offered for preferential bidding in accordance with the Small Business Act, as amended, the advertisement shall state that the offering is set-aside for competitive bidding by small business concerns.

[50 FR 32696, Aug. 14, 1985]

§ 223.83 Contents of prospectus.

(a) A timber sale prospectus shall specify, as a minimum:

(1) The minimum acceptable stumpage or other unit prices and the amount or rate of any additional required deposits.

(2) The amount of bid guarantee which must accompany each bid.

(3) The amount of cash deposit or down payment to be made promptly by the successful bidder.

(4) The location and area of the sale, including harvest acreage.

(5) The estimated volumes, quality, size or age class of timber.

(6) A description of special logging requirements for the sale.

(7) The status of marking at time of advertisement.

(8) The method of bidding which will be used.

(9) The contract form to be used.

(10) The estimated deposits for reforestation and stand improvement work.

(11) The contract termination date and normal operating period.

(12) The date and amount of periodic payments which are to be made.

(13) The discount of payment rates for early harvest, if appropriate.

(14) The amount of performance bond required.

(15) The road standards for specified roads to be constructed.

(16) The estimated road construction cost and purchaser credit limit.

(17) For deficit sales,

(i) An estimate of insufficient value at advertised rates to permit the purchaser to apply the full amount of purchaser credit.

(ii) The amount of Forest Service funds or materials to be used to offset the deficit.

(18) Status of financial assistance available to small business purchasers.

(19) Notification of preferential award to small business firms and certification requirements for set-aside sales.

(20) Notification of log export and substitution restrictions.

(21) Notification of Equal Employment Opportunity compliance review requirements.

(22) General or special information concerning the sale which are deemed appropriate to furnish sufficient information to prospective purchasers to warrant further investigation.

(b) For each advertisement which extends to small concerns the option to have all permanent roads constructed by the Forest Service, the prospectus shall also include:

(1) The road standards applicable to construction of permanent roads or a reference to the source of such information.

(2) The date of final completion for all permanent roads.

(3) A statement explaining how the Forest Service intends to perform road construction by force account or contract, if the high bidder elects Forest Service construction.

(4) The maximum period for which timber sale contract award will be delayed while the Forest Service seeks a satisfactory construction bid. The period stated shall not exceed 120 days unless the Regional Forester approves a longer period.

[50 FR 32696, Aug. 14, 1985]

§ 223.84 Small business bid form provisions on sales with purchaser road construction credits.

For each sale described in § 223.82(b), the bid form must include provision for a small business concern:

(a) To elect road construction by the Forest Service and where such election is made;

(b) To certify as to small business status, and

(c) To indicate knowledge (1) of the road construction completion date, (2) that the Forest Service expects to contract for road construction with a third party, (3) that the timber sale contract will not be awarded unless a satisfactory road construction bid is received or, if the Forest Service fails to receive such a bid within a maximum period stated in the advertisement, the bidder agrees to perform road construction, (4) that the Forest Service may extend the maximum award delay time by the amount of time needed to confirm the bidder's size status or by any time in excess of 40 days from timber sale bid opening needed to begin solicitation of construction bids, and (5) that if the Forest Service extends the maximum award delay period because solicitation of the road contract is delayed, the bidder may withdraw his bid without penalty.

[42 FR 28252, June 2, 1977. Redesignated at 49 FR 2761, Jan. 23, 1984, and further redesignated and amended at 50 FR 32696, Aug. 14, 1985]

§ 223.85 Noncompetitive sale of timber.

Forest officers may sell, within their authorization, without further advertisement, at not less than the appraised value, any timber previously advertised for competitive bids but not sold because of lack of acceptable bids and any timber on uncut areas included in a contract which has been terminated by abandonment, cancellation, contract period expiration, or otherwise if such timber would have been cut under the contract. This authority shall not be utilized if there is evidence of competitive interest in the timber.

[42 FR 28252, June 2, 1977. Redesignated at 49 FR 2761, Jan. 23, 1984 and 50 FR 32696, Aug. 14, 1985]

§ 223.86 Bid restriction on resale of noncompleted contract.

(a) Except as otherwise provided in this section, no bid will be considered in the resale of timber remaining from any uncompleted timber sale contract from any person, or from an affiliate of such person, who failed to complete the original contract:

(1) Because of termination for purchaser's branch or; or

(2) Through failure to cut designated timber on portions of the sale area by the termination date, unless acceptance of such bid is determined to be in the public interest.

(b) The no bid restriction in the preceding paragraph: (1) Shall only apply when 50 percent or more of the timber included in the resale is timber remaining from the uncompleted contract and the resale is advertised within 3 years of the date the uncompleted contract terminated; (2) when imposed because of failure to cut designated timber on portions of the sale area by the termination date, shall not apply to resales of timber for which the original contract was awarded prior to April 30, 1972, unless the contract is extended thereafter; and (3) shall not apply to: (i) Resales of timber within a sustained yield unit unless competition may be invited under the policy statement for the unit, (ii) resales of timber on contract which would ordinarily have been awarded prior to April 30, 1972, if award was delayed through no fault of the purchaser, and (iii) resales of timber on contracts not extended because of environmental considerations.

(c) Where a third-party agreement has been approved in accordance with § 223.114; the original purchaser shall not be affected by this section unless such purchaser is an affiliate of the third party.

(d) As used in this section, "person" includes any individual, corporation, company, association, firm, partnership, society, joint stock company, or other business entity or the successor in interest of any of the foregoing business entities. A person is an "affiliate" when either directly or indirectly: (1) A person controls or has the power to control the other, or (2) a third person or persons control or has the power to control both.

[42 FR 28252, June 2, 1977. Redesignated at 49 FR 2761, Jan. 23, 1984 and 50 FR 32696, Aug. 14, 1985]

§ 223.87 Requirements of bidders concerning exports.

In order to have a bid considered for a sale of timber from National Forest System lands west of the 100th Meridian in the contiguous 48 States, a person must:

(a) Certify that purchase of the timber does not constitute substitution as defined in 36 CFR Part 223, Subpart D.

(b) Agree to furnish to the Forest Service, prior to sale award, the names and addresses of processing plants or other locations to which the timber is expected to be delivered; the names and advertised volumes of timber sales purchased for delivery to each such location in calendar years 1971, 1972, and 1973; and the volumes of unprocessed timber from private lands, tributary to each location listed, which was exported or sold for export in calendar years 1971, 1972, and 1973.

(c) Agree to furnish the information required by paragraph (b) of this section prior to hauling to any location not previously identified.

(d) Provide a certified report showing (1) the disposition of unprocessed National Forest timber harvested in the pevious calendar year in the tributary area in which the timber from the sale will be processed, including a description of unprocessed timber which is sold, exchanged, or otherwise disposed of to another person and a description of the relationship with the other person, and (2) the volumes of unprocessed timber from private lands in the tributary area which was exported or sold for export in the previous calendar year.

[45 FR 80528, Dec. 5, 1980. Redesignated at 49 FR 2761, Jan. 23, 1984 and 50 FR 32696, Aug. 14, 1985]

§ 223.88 Bidding methods.

(a) Competitive sales of National Forest timber shall be offered through either sealed or oral auction bidding. The method chosen for each sale will: (1) Insure open and fair competition, (2) insure that the Federal Government receives not less than fair market value for the public resource, (3) consider the economic stability of communities whose economies are dependent upon National Forest timber, and (4) be consistent with the objectives of the National Forest Management Act of 1976, as amended, and other Federal Statutes.

(b) As a prerequisite to participation in an oral auction, bidders shall submit a written sealed bid at least equal to the minimum acceptable bid prices specified in the prospectus. No price subsequently bid at oral auction shall be accepted if it is less than the written sealed bid.

(c) The Chief, Forest Service, shall specify the use of sealed bids or a mix of bidding methods in areas where he has reasonable belief that collusive bidding may be occurring or where he determines that less than normal competitive bidding is occurring.

(d) Sealed bids shall be used for sales within Federal Sustained Yield Units, except where the policy statement for the Unit restricts purchasers of timber within the Unit from buying National Forest timber outside the Unit and the Chief determines that oral bidding will protect individual communities within the Unit.

(e) The Chief, Forest Service, may authorize departures from the requirements of paragraphs (c) and (d) of this section when he determines that departures are necessary to protect the public interest.

(f) The Chief, Forest Service, may authorize the testing and evaluation of alternative bidding methods for National Forest timber.

[43 FR 21882, May 22, 1978. Redesignated at 49 FR 2761, Jan. 23, 1984; further redesignated and amended at 50 FR 32696, Aug. 14, 1985]

§ 223.89 Relation to other bidders.

Any bidder or applicant for a sale may be required to furnish a statement of his relation to other bidders or operators, including, if desired by the supervisor or Regional Forester, a certified statement of stockholders or members of the firm, and the holders of bonds, notes or other evidences of indebtedness, so far as known, so that the statement will show the extent of the interest of each in the bidder or applicant.

[44 FR 73029, Dec. 17, 1979. Redesignated at 49 FR 2761, Jan. 23, 1984 and 50 FR 32696, Aug. 14, 1985]

Award of Contracts

§ 223.100 Award to highest bidder.

The sale of advertised timber shall be awarded to the responsible bidder submitting the highest bid that conforms to the conditions of the sale as stated in the prospectus unless:

(a) Determination is made to reject all bids.

(b) Two or more bidders, all of whom meet the requirements, submit equal bids which are the highest bids, in which case award may be by the drawing of lots. Equal bids from parties having direct or indirect common control or association in logging, processing or marketing may be consolidated to the extent deemed necessary by the awarding officer in order to give to any others who have bid the same amount an equitable opportunity in the drawing of lots.

(c) The highest bidder is notoriously or habitually careless with fire.

(d) Monopoly, injurious to the public welfare, would result from the control of large amounts of public or of public and private timber.

(e) The high bidder has elected Forest Service road construction in response to an advertisement extending such an option, the Forest Service cannot perform the construction and in response to solicitation has not received a satisfactory bid for such construction within the period stated in the prospectus and the high timber sale bidder is unwilling to perform the construction.

[44 FR 73029, Dec. 17, 1979. Redesignated at 49 FR 2761, Jan. 23, 1984, and amended at 50 FR 32696, Aug. 14, 1985; 53 FR 33132, Aug. 30, 1988]

§ 223.101 Determination of purchaser responsibility.

(a) A Contracting Officer shall not award a timber sale contract unless that officer makes an affirmative determination of purchaser responsibility. In the absence of information clearly indicating that the prospective purchaser is responsible, the Contracting Officer shall conclude that the prospective purchaser does not qualify as a responsible purchaser.

(b) To determine a purchaser to be responsible, a Contracting Officer must find that:

(1) The purchaser has adequate financial resources to perform the contract or the ability to obtain them;

(2) The purchaser is able to perform the contract within the contract term taking into consideration all existing commercial and governmental business commitments;

(3) The purchaser has a satisfactory performance record on timber sale contracts. A prospective purchaser that is or recently has been seriously deficient in contract performance shall be presumed not to be responsi-

ble, unless the Contracting Officer determines that the circumstances were beyond the purchaser's control and were not created through improper actions by the purchaser or affiliate, or that the purchaser has taken appropriate corrective action. Past failure to apply sufficient tenacity and perseverance to perform acceptably under a contract is strong evidence that a purchaser is not a responsible contractor. The Contracting Officer shall consider the number of contracts involved and extent of deficiency of each in making this evaluation;

(4) The purchaser has a satisfactory record of integrity and business ethics;

(5) The purchaser has or is able to obtain equipment and supplies suitable for logging the timber and for meeting the resource protection provisions of the contract;

(6) The purchaser is otherwise qualified and eligible to receive an award under applicable laws and regulations.

(c) If the prospective purchaser is a small business concern and the Contracting Officer determines that the purchaser does not qualify as a responsible purchaser on an otherwise acceptable bid, the Contracting Officer shall refer the matter to the Small Business Administration which will decide whether or not to issue a Certificate of Competency.

(d) Affiliated concerns, as defined in § 223.49(a)(5) of this subpart are normally considered separate entities in determining whether the concern that is to perform the contract meets the applicable standards for responsibility. However, the Contracting Officer shall consider an affiliate's past performance and integrity when they may adversely affect the prospective purchaser's responsibility.

[53 FR 33132, Aug. 30, 1988]

§ 223.102 Procedures when sale is not awarded to highest bidder.

If the highest bid is not accepted and the sale is still deemed desirable, all bids may be rejected and the timber readvertised; or, if the highest bidder cannot meet the requirements under which the timber was advertised or the withholding of award to him is based on one or more of paragraphs (c), (d), and (e) of § 223.100, award at the highest price bid may be offered to the next highest qualified bidder or to the other qualified bidders in order of their bids until the award is accepted by one or refused by all of the qualified bidders.

(92 Stat. 1301, Pub. L. 95-465)

[44 FR 73029, Dec. 17, 1979. Redesignated at 49 FR 2761, Jan. 23, 1984. Redesignated at 53 FR 33132, Aug. 30, 1988]

§ 223.103 Award of small business set-aside sales.

If timber is advertised as set aside for competitive bidding by small business concerns, award will be made to the highest bidder who qualifies as a small business concern and who has not been determined by the Small Business Administration to be ineligible for preferential award of set-aside sales. If there are no qualified small business bidders any readvertisement shall be without restriction on the size of bidders.

(92 Stat. 1301, Pub. L. 95-465)

[44 FR 73029, Dec. 17, 1979. Redesignated at 49 FR 2761, Jan. 23, 1984. Redesignated at 53 FR 33132, Aug. 30, 1988]

CONTRACT ADMINISTRATION

§ 223.110 Delegation to regional forester.

The Chief, Forest Service, after approval of conditions of sale, may authorize Regional Foresters formally to execute timber sale contracts and related papers in sales exceeding the volume which the Regional Forester has been authorized to sell.

§ 223.111 Administration of contracts in designated disaster areas.

This section is to implement the provisions of section 242 (a), (b), and (c) of the Disaster Relief Act of 1970 (84 Stat. 1956) which relate to contracts for the sale of National Forest timber in connection with areas damaged by major disaster as designated by the President pursuant to the Act.

(a) Where an existing contract for the sale of National Forest timber does not provide relief from major physical change not due to purchaser's negligence prior to approval of construction of any section of specified road or other specified development facility and, as a result of a major disaster in a designated area a major physical change results in additional construction work by the purchaser in connection with such a road or facility, the United States shall bear such increased construction cost if, as determined by the Chief, Forest Service, the estimated cost is (1) more than $1,000 for sales under 1 million board feet, or (2) more than $1 per thousand board feet for sales of 1 to 3 million board feet, or (3) more than $3,000 for sales over 3 million board feet.

(b) Where the Chief, Forest Service, determines that damages are so great that restoration, reconstruction, or construction is not practical under the cost-sharing arrangement in paragraph (a) of this section, he may allow cancellation of the contract notwithstanding provisions therein or in § 223.116.

(c) The Chief, Forest Service, is authorized to reduce to 7 days the minimum time to advertise the sale of National Forest timber whenever he determines that (1) the sale of such timber will assist in the construction of any area of a State damaged by a major disaster, (2) the sale of such timber will assist in sustaining the economy of such area, or (3) the sale of such timber is necessary to salvage the value of timber damaged in such major disaster or to protect undamaged timber.

(d) Any request for relief under paragraph (a) or (b) of this section shall be made in writing to the Forest Supervisor having administrative responsibility for the land involved.

(Sec. 242 (a), (b), and (c), 84 Stat. 1756, 42 U.S.C. 4461)

§ 223.112 Modification of contracts.

Timber sale contracts may be modified only when the modification will apply to unexecuted portions of the contract and will not be injurious to the United States. Modifications may be made by the officer approving the sale, by his successor, or by his superior, except as provided in § 223.110.

§ 223.113 Modification to prevent environmental damage or to conform to forest plans.

Timber sale contracts may be modified to prevent environmental damage or to make them consistent with guidelines and standards developed to implement section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended, and with land management plans adopted thereunder. Modifications shall be subject to the purchaser's valid existing rights. Rates of payment for timber shall be adjusted to reflect changes, if any, in the value of the timber, subject to existing contract limitations on rates.

§ 223.114 Acquisition by third party.

No agreement permitting a third party to acquire the rights of a purchaser under a timber sale contract may be recognized and approved by the Forest Service except in writing, signed by the officer approving the sale, his successor, or superior officer. Such approval shall not relieve the purchaser of his responsibilities or liabilities under the timber sale contract and may be given only if (a) the third party is acceptable to the Forest Service as a purchaser of timber under the conditions and requirements then in effect for similar timber sales and assumes in writing all of the obligations to the Forest Service under the terms of the timber sale contract as to the uncompleted portion thereof, or (b) the rights are acquired in trust as security and subject to such conditions as may be necessary for the protection of the public interests.

§ 223.115 Contract extensions.

The term of any contract or permit shall not be extended unless the approving officer finds:

(a) That the purchaser has diligently performed in accordance with contract provisions and an approved plan of operation; or

(b) That the substantial overriding public interest justifies the extension.

§ 223.116 Cancellation.

(a) Timber sale contracts and permits may be canceled:

(1) For serious or continued violation of their terms.

(2) Upon application, or with the consent of the purchaser, when such action is of advantage to the United States or not prejudicial to its interests.

(3) Upon application of the purchaser if the value of the timber remaining to be cut is diminished materially because of catastrophic damage caused by forces beyond the control of the purchaser resulting in (i) physical change in the sale area or access to it, or (ii) damage to timber remaining to be cut.

(4) For conviction of violation of criminal statutes or, following final agency or judicial determination, of violation of civil standards, orders, permits, or others regulations for the protection of environmental quality issued by a Federal agency, State agency, or political subdivision thereof, in the conduct of operations thereunder, on National Forest System land, unless compliance with such laws or regulations would preclude performance of other contractual requirements.

(5) Upon determination by the Chief, Forest Service, that operations thereunder would result in serious environmental degradation or resource damage and with reasonable compensation to the purchaser for unrecovered costs incurred under the contract and the difference between the current contract value and the average value of comparable National Forest timber sold during the preceding 6-month period.

(b) Cancellation will be by the Chief, Forest Service. Authority to cancel contracts under paragraph (a) (1) through (4) of this section may be delegated to Regional Foresters for sales within their authorization. All contract cancellations under paragraph (a)(5) of this section shall be by the Chief, Forest Service, whose decision shall be the final agency decision.

[42 FR 28252, June 2, 1977, as amended at 48 FR 23819, May 27, 1983. Redesignated at 49 FR 2761, Jan. 23, 1984]

§ 223.117 Administration of cooperative or Federal sustained yield units.

With respect to sustained yield units established pursuant to the provisions of the Act of March 29, 1944 (58 Stat. 132; 16 U.S.C. 583-583i), the Chief, Forest Service, with authority to delegate to other officers and employees of the Forest Service:

(a) Shall provide that National Forest timber in any sustained yield unit shall be available in sufficient amounts to meet the needs of bona fide farmers, settlers, miners, residents and prospectors for minerals for personal and domestic use as provided by law and by regulation.

(b) May offer for sale to cooperators, without competition but at not less than appraised value, timber on National Forest lands within an approved cooperative sustained yield unit; or, if the approved sustained yield unit consists entirely of federally owned or administered forest land and if necessary for the maintenance of a stable community or communities, may offer National Forest timber for sale to responsible operators within such community or communities, at not less than appraised value but without competition or with competition restricted to responsible operators who will manufacture the timber to at least a stated degree within the community or communities to be maintained. Each such sale which involves more than $500 in stumpage value may be made only after notice has been given in advance by such means as may be deemed effective in informing the public of the proposed action, including in any event, publication, once weekly for four consecutive weeks and with additional insertions if needed, in one or more newspapers of general circulation in the vicinity of the place where the timber is located, of a notice of the proposed sale stating at least:

(1) The location, estimated quantity and appraised value of the timber to be cut;

(2) The name and address of the proposed purchaser or those of the operators among whom bidding is to be restricted;

(3) The time and place of a public advisory hearing on the proposed sale,

to be held not earlier than 30 days after the first publication of said notice, if requested by the State or county where the timber is located or by any other person deemed to have a reasonable interest in the proposed sale or in its terms; and

(4) The title and address of the officer of the Forest Service to whom any request for such hearing should be made.

Such requests need be considered only if received at the place designated in the notice not later than 15 days after the first publication of such notice. If a public advisory hearing is to be held, notice of it shall be published in the same newspaper or newspapers as the original notice, stating the place where it will be held and the time, which shall not be earlier than 10 days after the first publication of the said notice of hearing, and shall appear once each week, but not for more than four successive weeks in any event, until the date set for the hearing. Any such hearing shall be conducted by the Chief or by any officer designated by him as his representative, except that if the amount of the proposed sale is not in excess of that which the Regional Forester has been authorized to sell without prior approval of the Chief the hearing may be held by the Regional Forester concerned or by his representative and decision may be by the Regional Forester. At any such hearing, opportunity shall be given to those having a reasonable interest to make oral statements or to file written statements discussing the advantages and disadvantages of the proposed sale; and the officer holding the hearing may, in his discretion, permit the filing of such statements within a reasonable period after the close of the hearing to become part of the record for consideration before a decision is made.

(c) Shall keep available for public inspection, (1) During the life of any sustained yield unit, the minutes or other record of the hearing held on the establishment thereof, and the determination of action taken following the hearing including any modification of the proposals as submitted at the hearing; and (2) during the life of any cooperative agreement for coordinated management the similar record of the hearings and actions determined upon; and (3) during the life of any sustained yield unit the similar record of any public hearing which may be held on a sale made without competition or with restricted competition and the action determined upon. Such records of any case may be kept in any office of the Forest Service designated by the Chief as being suitable and convenient of access for probably interested persons.

(d) Shall make provision, in any contract for the purchase of timber without competition or with restricted competition, if that contract is of more than 7 years' duration and in his discretion in any case of shorter duration, for the redetermination of rates for stumpage and for required deposits to be paid by the purchasers, such redetermination to be effective at intervals or dates stated in the contract; but the sum of such redetermined rates for stumpage and sale area betterment shall not be less than the base rates in the published notice of the proposed sale.

(e) May modify and revise existing cooperative agreements entered into under said act after taking appropriate action.

Subpart C—Suspension and Debarment of Timber Purchasers

Source: 52 FR 43329, Nov. 12, 1987, unless otherwise noted.

§ 223.130 Scope.

(a) This subpart prescribes policies and procedures governing the debarment and suspension of purchasers of National Forest System timber.

(b) It provides for the listing of debarred and suspended purchasers.

(c) It sets forth the causes and procedures for debarment and suspension and for determining the scope, duration, and treatment to be accorded to purchasers listed as debarred or suspended.

§ 223.131 Applicability.

These regulations apply to purchasers of National Forest System timber. They do not apply to Forest Service procurement contracts (See 41 CFR 4-1.6).

§ 223.132 Policy.

(a) The Forest Service shall solicit and consider timber sale bids from and award contracts only to responsible business concerns and individuals. Debarment and suspension by the Forest Service are discretionary actions that, taken in accordance with these regulations, are appropriate means to effectuate this policy.

(b) Debarment and suspension shall be imposed only for the causes and in accordance with the procedures set forth in this subpart. The serious nature of debarment and suspension requires that these actions be imposed only in the public interest, for the Government's protection, and not for the purpose of punishment.

(c) Debarment and suspension actions taken under this subpart shall be based on the administrative record, including any submissions and argument made by the purchaser or named affiliate in accordance with this subpart, and shall be limited in scope and duration to that necessary to protect the Government's interest.

§ 223.133 Definitions.

As used in this subpart, the following terms shall have the meanings set forth below:

Adequate evidence means information sufficient to support the reasonable belief that a particular act or omission has occurred.

Affiliates. Business concerns or individuals are affiliates of each other if, directly or indirectly, (a) either one controls or has the power to control the other; or (b) a third party controls or has the power to control both. In determining whether or not affiliation exists, the Forest Service shall consider all appropriate factors, including, but not limited to, common ownership, common management, and contractual relationships.

Civil judgment means a judgment or finding of a civil offense by any court of competent jurisdiction.

Control means the power to exercise, directly or indirectly, a controlling influence over the management, policies, or activities of an individual or business concern, whether through ownership of voting securities, through one or more intermediary individuals or business concerns, or otherwise.

Conviction means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

Debarment means action taken by a debarring official under §§ 223.136 through 223.140 to exclude a purchaser from Forest Service timber sale contracts for a reasonable, specified period of time; a purchaser so excluded is *debarred.*

Debarring official means the Chief of the Forest Service or the Deputy Chief, National Forest System, or the Associate Deputy Chief, Resources Divisions, National Forest System.

Indictment means indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

Legal proceedings means any civil judicial proceeding to which the Government is a party or any criminal proceeding. The term includes appeals from such proceedings.

Notice means a written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, or agent for service of process. In the case of an organization, such notice may be sent to any partner, principal officer, director, owner or co-owner, or joint venturer.

Preponderance of the evidence means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

Purchaser means any individual, organization, or other legal entity that (a) submits bids for, is awarded, or reasonably may be expected to submit bids for or be awarded, a Forest Service timber sale contract or (b) conducts business with the Forest Service as an agent or representative of another timber sale purchaser.

Suspending official means the Chief of the Forest Service or the Deputy

Chief, National Forest System or the Associate Deputy Chief, Resources Divisions, National Forest System.

Suspension means action taken by a suspending official under §§ 223.141 through 223.145 to immediately exclude a purchaser from bidding on or purchasing National Forest System timber for a temporary period of time pending completion of an investigation and such legal or debarment proceedings as may ensue; a purchaser so excluded is *suspended*.

§ 223.134 List of debarred and suspended purchasers.

(a) The Deputy Chief, National Forest System, shall compile and maintain a current list of National Forest System timber purchasers and affiliates who are debarred, suspended, or proposed for debarment. This list shall be distributed to all Regional Foresters and Forest Supervisors, the General Services Administration, the General Accounting Office, the Bureau of Land Management and other Federal agencies requesting said list.

(b) The Forest Service list shall contain the following information:

(1) The purchaser's name and address, and the name and address of any affiliate of the purchaser included pursuant to §§ 223.140(a) or § 223.145.

(2) The cause(s) for the action (see §§ 223.137 and 223.142).

(3) Any limitations to or deviations from the normal effect of debarment or suspension.

(4) The effective date of the action and, in the case of debarment, the expiration date.

(5) The name and telephone number of the point of contact in the Forest Service regarding the action.

§ 223.135 Effect of listing.

Purchasers debarred or suspended in accordance with this subpart shall be excluded from bidding on or award of Forest Service timber sale contracts, and the Forest Service shall not knowingly solicit or consider bids from, award contracts to, approve a third-party agreement with, or renew or otherwise extend, except pursuant to the terms of a contract term adjustment, the duration of an existing timber sale contract with these purchasers, unless the Chief of the Forest Service or authorized representative determines, in writing, that there is a compelling reason for such action.

§ 223.136 Debarment.

(a) *General.* In accordance with the procedures in § 223.138, the debarring official may in the public interest, debar a purchaser for any of the causes listed in § 223.137. However, the existence of a cause for debarment does not necessarily require that the purchaser be debarred. In making any debarment decision, the debarring official shall consider the seriousness of the purchaser's acts or omissions and any mitigating factors.

(b) *Effect of proposed debarment.* Upon issuance of a notice of proposed debarment by the debarring official and until the final debarment decision is rendered, the Forest Service shall not solicit or consider bids from, award contracts to, approve a third party agreement with, renew or otherwise extend, except pursuant to the terms of a contract term adjustment, any contract with that purchaser. The Chief and the Forest Service or authorized representative may waive this exclusion upon a written determination identifying compelling reasons justifying business dealings with that purchaser pending completion of debarment proceedings.

§ 223.137 Causes for debarment.

The debarring official may debar a purchaser for any of the following causes:

(a) Conviction of or civil judgment for:

(1) Theft, forgery, bribery, embezzlement, falsification or destruction of records, making false statements, or receiving stolen property;

(2) Fraud, a criminal offense, or violation of Federal or State antitrust laws, any of which occurred in connection with obtaining, attempting to obtain, or performing a public contract or subcontract.

(3) Any other offense indicating a lack of business integrity or honesty that seriously and directly affects the

present responsibility of the purchaser.

(b) A purchaser's debarment from the purchase of timber by another Federal agency which sells timber.

(c) Cutting and/or removal of more than incidental volumes of timber not designated for the purchaser's cutting from a national forest.

(d) Substantial violation of the terms of one or more Forest Service timber sale contracts so serious as to justify debarment, such as:

(1) Willful failure to perform in accordance with contract; or

(2) A history of failure to perform contract terms; or of unsatisfactory performance of contract terms.

(e) Among actions the Forest Service regards as so serious as to justify debarment under paragraph (d) of this section are willful violation or repeated failure to perform National Forest System timber sale contract provisions relating to the following:

(1) Fire suppression, fire prevention, and the disposal of slash;

(2) Protection of soil, water, wildlife, range, cultural, and timber resources and protection of improvements when such failure causes significant environmental, resource, or improvements damage;

(3) Removal of designated timber when such failure causes substantial product deterioration or conditions favorable to insect epidemics;

(4) Observance of restrictions on exportation of timber;

(5) Observance of restrictions on the disposal of timber from small business set-aside sales;

(6) Providing access to the Forest Service upon its request to purchaser's books and accounts;

(7) Payment of monies due under terms of a Forest Service timber sale contract, including payment of damages relating to failure to cut designated timber by the contract termination date;

(8) Performance of contract by the contract termination date.

(f) Any other cause so serious or compelling that if affects the present responsibility of a purchaser of Government timber.

§ 223.138 Procedures for debarment.

(a) *Investigation and referral.* Information which may be sufficient cause for debarment of a timber sale purchaser and affiliates shall be reported to the Forest Service Debarring Official. Generally, such information should be referred through the Forest Supervisor and the Regional Forester. The referral shall be accompanied by a complete statement of the facts supported by appropriate exhibits and a recommendation for action. Where the statement of facts indicates a possible criminal offense, except possible antitrust violations, the debarring official shall notify the Office of Inspector General, USDA. Where the statement of facts indicates a possible antitrust violation, the debarring official shall notify the Antitrust Division, Department of Justice.

(b) *Decisionmaking process*—(1) *Notice of proposal to debar.* The debarring official shall initiate debarment by advising the purchaser and any specifically named affiliate, by certified mail, return receipt requested. The notice document shall include the following information:

(i) That debarment is being considered.

(ii) The reasons for the proposed debarment in terms sufficient to put the recipient on notice of the conduct or transaction(s) upon which it is based.

(iii) The cause(s) relied upon under § 223.137 for proposing debarment.

(iv) The specific procedures governing debarment decisionmaking in § 223.138 (b)(1) through (b)(8).

(v) The effect of the issuance of the notice of proposed debarment pending a final debarment decision (see § 223.136(b)).

(vi) The potential effect of a debarment.

(2) *Submission in opposition.* Within 30 calendar days after receipt of the notice of proposed debarment, the respondent my submit, in person, in writing, or through a representative, information and argument in opposition to and/or in mitigation of the proposed debarment, including any additional specific information that raises a genuine dispute over the material facts.

(3) *Informal hearing.* Pursuant to paragraph (b)(2) of this section, a respondent may request an informal hearing with the debarring offical. The informal hearing shall be held within 20 calendar days from the date the request is received. The debarring official may postpone the date of the hearing if the respondent requests a postponement in writing. At the hearing, the respondent, appearing personally or through an attorney or other authorized representative, may informally present and explain evidence that causes for debarment do not exist, evidence of any mitigating factors, and arguments concerning the imposition, scope, duration or effects of proposed debarment or debarment. A transcript of the informal hearing shall not be required.

(4) *Additional proceedings as to disputed material facts.* In actions not based upon a conviction or civil judgment, if the debarring official finds that and gives notice that the submission in opposition raises a genuine dispute over facts material to the proposed debarment, respondent(s) may request a fact-finding conference on those disputed material facts. Such a conference shall be held within 20 calendar days from the date the request is received unless mutually agreed otherwise. The fact-finding conference shall conform with the following requirements:

(i) At least 10 days before the fact-finding conference, the debarring official shall send the respondent a copy of all documents in the administrative record as of the date of transmittal and not objected to by the Department of Justice.

(ii) At the conference, the respondent shall have the opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the Forest Service presents.

(iii) A transcribed record of any additional proceedings shall be made available at cost to the respondent upon request, unless the respondent and the Forest Service, by mutual agreement, waive the requirement for a transcript.

(5) *Debarring official's decision*—(i) *No additional proceedings necessary.* In actions based upon a conviction or civil judgement or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the purchaser or any specifically named affiliate. The decision shall be made within 30 working days after receipt of any information and argument submitted, unless the debarring official extends this period for good cause.

(ii) *Additional proceedings necessary.* (A) In actions in which additional proceedings are necessary to determine disputed material facts, the debarring official shall promptly prepare written findings of fact. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the purchaser or any specifically named affiliate and any other information in the administrative record.

(B) The debarring official may refer matters involving disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(C) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(6) *Standard of evidence.* In any action in which the proposed debarment is not based upon a conviction or civil judgment, the cause for debarment must be established by a preponderance of the evidence. In any action in which the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

(7) *Notice of debarring official's decision.* (i) The purchaser and any affiliates involved shall be given prompt notice of the debarring official's decision by certified mail, return receipt requested. If the debarring official decides to impose debarment, the notice shall:

(A) Refer to the notice of proposed debarment;

(B) Specify the reasons for debarment;

(C) State the period of debarment, including effective dates (see § 223.139);

(D) Specify any limitations on the terms of the debarment; and

(E) State that any decision to debar is appealable to the Agriculture Board of Contract Appeals pursuant to paragraph (b)(8) of this section.

(ii) The debarring official shall also promptly notify Regional Foresters and Forest Supervisors of the decision.

(8) *Review of debarring official's decision.* The purchaser and any affiliates involved may appeal a Forest Service debarring official's decision to debar within 30 days from receipt of the decision. To appeal, a purchaser and any affiliates involved must furnish a written notice to the U.S. Department of Agriculture Board of Contract Appeals, Washington, DC 20250, and a copy of the appeal to the debarring official from whose decision the appeal is taken. The rules and procedures of the U.S. Department of Agriculture Board of Contract Appeals set forth in 7 CFR part 24, govern debarment appeals.

§ 223.139 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s). Generally, a debarment should not exceed 3 years. The debarring official shall consider any suspension period or period since issuance of the notice of proposed debarment in determining the debarment period.

(b) The debarring official may extend the debarment for an additional period if that official determines that an extension is necessary to protect the Government's interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined necessary, the debarring official shall initiate and follow the procedures in § 223.138 to extend the debarment.

(c) The debarring official may consider terminating the debarment or reducing the period or extent of debarment, upon the purchaser's request, supported by documentation, for reasons such as:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or judgment upon which the debarment was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the debarring official deems appropriate.

(d) The debarring official shall make final disposition of a reconsideration request under paragraph (c) of this section in writing within 30 working days of receipt of the reconsideration request and supporting documentation, unless the debarring official extends this period for good cause. The notice of the decision shall set forth the reasons for granting or denying the request.

§ 223.140 Scope of debarment.

(a) *Scope in general.* (1) Debarment of a purchaser constitutes debarment of all divisions or other organizational elements of the purchaser, unless the debarment decision is limited by its terms to specific divisions, organizational elements, or classes of sales.

(2) The debarring official may extend a debarment decision to include any affiliates of the purchaser, if they are—

(i) Specifically named and

(ii) Given written notice of the proposed debarment and provided an opportunity to respond (see § 223.138(b)).

(b) *Imputing conduct.* For purposes of determinig the scope of debarment, conduct may be imputed as follows:

(1) The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a purchaser may be imputed to a purchaser when the conduct occurred in connection with the individual's performance of duties for or on behalf of the purchaser, or with the purchaser's knowledge, approval, or acquiescence. The purchaser's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(2) The fraudulent, criminal, or other seriously improper conduct of a

purchaser may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the purchaser who participated in, knew of, or has reason to know of the purchaser's conduct.

(3) The fraudulent, criminal, or other seriously improper conduct of one purchaser participating in a joint venture or similar arrangement may be imputed to other participating purchasers if the conduct occurred for or on behalf of the joint venture or similar arrangement or with the knowledge, approval, or acquiescence of those purchasers. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.

§ 223.141 Suspension.

(a) The suspending official may, in the public interest, suspend a purchaser on the basis of adequate evidence for any of the causes in § 223.142, using the procedures in § 223.143. However, the existence of a cause for suspension does not necessarily require that the purchaser be suspended. In making any suspension decision, the suspending official shall consider the seriousness of the purchaser's acts or omissions and any mitigating factors.

(b) Suspension is a serious action to be imposed, pending the completion of investigation or legal proceedings, when it has been determined that immediate action is necessary to protect the Government's interest. In assessing the adequacy of the evidence, consideration shall be given to how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated and what inferences can reasonably be drawn as a result. This assessment shall include an examination of basic documents such as contracts, bids, awards, inspection reports, and correspondence, as appropriate.

§ 223.142 Causes for suspension.

(a) The suspending official may suspend a purchaser suspected, upon adequate evidence, of the following:

(1) Commission of:

(i) Theft, forgery, bribery, embezzlement, falsification or destruction of records, making false statements, or receiving stolen property;

(ii) Fraud, a criminal offense, or violation of Federal or State antitrust laws, any of which occurred in connection with obtaining, attempting to obtain; or performing a public contract or subcontract; or

(iii) Any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a purchase of Government timber.

(2) Indictment for any of the causes listed in paragraph (a) of this section constitutes adequate evidence for suspension.

(3) A purchaser's suspension from the purchaser of timber by another Federal agency which sells timber.

(b) The suspending official may, upon adequate evidence, also suspend a purchaser for any other cause so serious or compelling that it affects the present responsibility or a purchaser of Government timber.

§ 223.143 Procedures for suspension.

(a) *Investigation and referral.* Information which may be sufficient cause for suspension under § 223.142 shall be reported to the Forest Service Suspending Official. Generally, such information should be referred through the Forest Supervisor and the Regional Forester. The referral shall be accompanied by a complete statement of the facts supported by appropriate exhibits and a recommendation for action. Where the statement of facts indicates a possible criminal offense, except possible antitrust violations, the suspending official shall notify the Office of Inspector General, USDA. Where the statement of facts indicates a possible antitrust violation, the suspending official shall notify the Antitrust Division, Department of Justice.

(b) *Decisionmaking process*—(1) *Notice of suspension.* When a purchaser and any specifically named affiliates are suspended, the suspending official shall so advise the purchaser and any specifically named affiliate immediately by certified mail, return receipt requested. Such notice shall specify:

(i) That they have been suspended as of the date of the notice;

(ii) That the suspension is based on an indictment or other adequate evidence that the purchaser has committed irregularities,

(A) Of a serious nature in business dealings with the Government, or

(B) Seriously reflecting on the propriety of further Government dealings with the recipient;

(iii) Any such irregularities shall be described in terms sufficient to place the recipient on notice without disclosing the Government's evidence;

(iv) That the suspension is for a temporary period of time pending the completion of an investigation and such legal proceedings as may ensue;

(v) The cause(s) relied upon under § 223.142 for imposing suspension;

(vi) The effect of the suspension (see § 223.135);

(vii) The specific procedures governing suspension decisionmaking in § 223.143 (b)(1) through (b)(6).

(2) *Submission in opposition.* Within 30 calendar days after receipt of the notice of suspension, the purchaser or any specifically named affiliate may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension, including any additional specific information that raises a genuine dispute over material facts.

(3) *Informal hearing.* Pursuant to paragraph (b)(2) of this section, respondent may request an informal hearing with the suspending official. The informal hearing shall be held within 20 calendar days from the date the request is received. The suspending official may postpone the date of the hearing if the respondent requests a postponement in writing. At the hearing, the respondent, appearing personally or through an attorney or other authorized representative, may informally present and explain evidence that causes for suspension do not exist, evidence of any mitigating factors, and arguments concerning the imposition, scope, duration or effects of suspension. A transcript of the informal hearing shall not be required.

(4) *Additional proceedings as to disputed material facts.* (i) If the suspending official finds that there exists a genuine dispute over facts material to the suspension, respondent(s) shall be afforded an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the Forest Service presents, unless—

(A) The action is based on an indictment; or

(B) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(ii) If appropriate, the respondent may request a fact-finding conference on disputed material facts. Such a conference shall be held within 20 calendar days from the date the request is received unless mutually agreed otherwise. The fact-finding conference shall conform with the following requirements:

(A) At least 10 days before the fact-finding conference, the suspending official shall send the respondent a copy of all documents in the administrative record as of the date of transmittal and not objected to by the Department of Justice.

(B) At the conference, the respondent shall have the opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the Forest Service presents.

(iii) A transcribed record of any additional proceedings shall be prepared and made available at cost to the respondent upon request, unless the respondent and the Forest Service, by mutual agreement, waive the requirement for a transcript.

(5) *Suspending official's decision.* The suspending official may modify or terminate the suspension or leave it in force for the same reasons as for terminating or reducing the period or extent of debarment (see § 223.139(c)). The decision shall be made in accordance with the following provisions:

(i) *No additional proceedings necessary.* In actions based on an indictment, in which the respondent's submission does not raise a genuine dispute over material facts; or in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official's decision shall be based on all the information in the administrative record, including any submissions and argument made by the respondent. The decision shall be made within 30 working days after receipt of any information and argument submitted by the respondent, unless the suspending official extends this period for good cause.

(ii) *Additional proceedings necessary.* (A) In actions in which additional proceedings are necessary as to disputed material facts, written findings of fact shall be promptly prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(B) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(C) The suspending official's decision shall be made only after the conclusion of any proceedings with respect to disputed facts.

(6) *Notice of suspending official's decision.* The purchaser and any affiliates involved shall be given prompt written notice of the suspending officer's decision to continue or not continue the suspension by certified mail, return receipt requested.

§ 223.144 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of investigation and any ensuing legal proceedings unless sooner terminated by the suspending official or as provided in paragraph (b) of this section.

(b) If legal proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General requests its extension, in which case it may be extended for an additional 6 months. In no event may a suspension extend beyond 18 months, unless legal proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of the proposed termination of any suspension, at least 30 days before the 12-month period expires, to give the Department an opportunity to request an extension.

§ 223.145 Scope of suspension.

The scope of suspension shall be the same as that for debarment (see § 223.140), except that the procedures in § 223.143 shall be used in imposing suspension.

Subpart D—Timber Export and Substitution Restrictions

§ 223.160 Definitions.

The following definitions apply to the provisions of this section:

(a) *Export* means either direct or indirect export to a foreign country and occurs on the date that a person enters into a contract or other binding transaction for the export of unprocessed timber or, if that date cannot be established, when unprocessed timber is found in an export yard or pond, bundled or otherwise prepared for shipment, or aboard an ocean-going vessel. An *export yard or pond* is an area where sorting and/or bundling of logs for shipment outside the United States is accomplished. Unprocessed timber, whether from National Forest System or private lands, is exported directly when exported by the National Forest timber purchaser. Timber is exported indirectly when export occurs as a result of a sale to another person or as a consequence of any subsequent transaction.

(b) *Historic level* means the average annual volume of unprocessed timber purchased or exported in calendar years 1971, 1972, and 1973.

(c) *Private lands* mean lands held or owned by a private person. *Nonprivate lands* include, but are not limited to, lands held or owned by the United States, a State or political subdivision thereof, or any other public agency, or lands held in trust by the United States for Indians.

(d) *Substitution* means the purchase of unprocessed timber from National Forest System lands to be used as replacement for unprocessed timber from private lands which is exported by the purchaser. Substitution occurs when (1) a person increases purchases of National Forest timber in any Calendar year more than 10 percent above their historic level and in the same calendar year exports unprocessed timber from private land in the tributary area; or (2) a person increases exports of unprocessed timber from private land in any tributary area more than 10 percent above their historic level in any calendar year while they have National Forest timber under contract.

(e) *Tributary area* means the geographic area from which unprocessed timber is delivered to a specific processing facility or complex. A tributary area is expanded when timber outside an established tributary area is hauled to the processing facility or complex.

(f) *Unprocessed timber, except western red cedar in the contiguous 48 States,* means trees or portions of trees having a net scale content not less than 33⅓ percent of the gross volume, or the minimum piece specification set forth in the timber sale contract, in material meeting the peeler and sawmill log grade requirements published in the January 1, 1980—Official Log Scaling and Grading Rules used by Log Scaling and Grading Bureaus on the West Coast; cants to be subsequently remanufactured exceeding 8¾ inches in thickness; cants of any thickness reassembled into logs; and split or round bolts, except for aspen, or other roundwood not processed to standards and specifications suitable for end-product use. Unprocessed timber shall not mean pulp (utility) grade logs and Douglas-fir special cull logs or timber processed into the following:

(1) Lumber and construction timbers, regardless of size, sawn on four sides;

(2) Chips, pulp, and pulp products;

(3) Green veneer and plywood;

(4) Poles, posts, or piling cut or treated for use as such;

(5) Cants cut for remanufacture, 8¾ inches in thickness or less;

(6) Aspen bolts, not exceeding 4 feet in length.

(g) *Unprocessed western red cedar timber in the contiguous 48 States* means trees or portions of trees of that species which have not been processed into (1) lumber of American Lumber Standards Grades of Number 3 dimension or better, or Pacific Lumber Inspection Bureau Export R-List Grades of Number 3 Common or better; (2) chips, pulp, and pulp products; (3) veneer and plywood; (4) poles, posts, or piling cut or treated with preservatives for use as such and not intended to be further processed; or (5) shakes and shingles; provided that lumber from private lands manufactured to the standards established in the lumber grading rules of the American Lumber Standards Association or the Pacific Lumber Inspection Bureau and manufactured lumber authorized to be exported under license by the Department of Commerce shall be considered processed.

(h) *Person* means an individual, partnership, corporation, association, or other legal entity and includes any subsidiary, subcontractor, parent company, or other affiliate. Business entities are considered affiliates for the entire calendar year when one controls or has the power to control the other or when both are controlled directly or indirectly by a third person during any part of the calendar year.

(i) *Purchase* occurs when a person is awarded a contract to cut National Forest timber or through the approval of a third party agreement by the Forest Service.

(j) *Purchaser* means a person that has purchased a National Forest timber sale.

(Sec. 14, Pub. L. 95-588, 90 Stat. 2958, as amended (16 U.S.C. 472a); sec. 301, Pub. L. 96-126, 93 Stat. 979; sec. 1, 30 Stat. 35, as amended (16 U.S.C. 55.1); sec. 301, 90 Stat. 1063, Pub. L. 94-373; sec. 1, 30 Stat. 35, as amended (16 U.S.C. 551))

[45 FR 80528, Dec. 5, 1980, as amended at 46 FR 2611, Jan. 12, 1981; 46 FR 22581, Apr. 20, 1981; 47 FR 746, Jan. 7, 1982. Redesignated at 49 FR 2761, Jan. 23, 1984]

§ 223.161 Limitations on timber harvested in Alaska.

Unprocessed timber from National Forest System lands in Alaska may not be exported from the United States or shipped to other States without prior approval of the Regional Forester. This requirement is necessary to ensure the development and continued existence of adequate wood processing capacity in that State for the sustained utilization of timber from the National Forests which are geographically isolated from other processing facilities. In determining whether consent will be given for the export of timber, consideration will be given to, among other things, whether such export will (a) permit more complete utilization on areas being logged primarily for local manufacture, (b) prevent loss or serious deterioration of logs unsaleable locally because of an unforeseen loss of market, (c) permit the salvage of timber damaged by wind, insects, fire, or other catastrophe, (d) bring into use a minor species of little importance to local industrial development, or (e) provide material required to meet urgent and unusual needs of the Nation.

(Sec. 14, Pub. L. 95-588, 90 Stat. 2958, as amended (16 U.S.C. 472a); sec. 301, Pub. L. 96-126, 93 Stat. 979; sec. 1, 30 Stat. 35, as amended (16 U.S.C. 55.1); sec. 301, 90 Stat. 1063, Pub. L. 94-373; sec. 1, 30 Stat. 35, as amended (16 U.S.C. 551))

[45 FR 80528, Dec. 5, 1980; 47 FR 746, Jan. 7, 1982. Redesignated at 49 FR 2761, Jan. 23, 1984]

§ 223.162 Limitations on timber harvested from all other states.

Unprocessed timber from National Forest System lands west of the 100th Meridian in the contiguous 48 States may not: (a) Be exported from the United States; (b) be used in substitution for unprocessed timber from private lands which is exported by the purchaser; or (c) be sold, traded, exchanged, or otherwise given to any person who does not agree to manufacture it to meet the processing requirements of this section and/or require such a processing agreement in any subsequent resale or other transaction. This limitation on export or substitution does not apply to species of timber previously found to be surplus to domestic needs or to any additional species, grades, or quantities of timber which may be found by the Secretary to be surplus to domestic needs.

(Sec. 14, Pub. L. 95-588, 90 Stat. 2958, as amended (16 U.S.C. 472a); sec. 301, Pub. L. 96-126, 93 Stat. 979; sec. 1, 30 Stat. 35, as amended (16 U.S.C. 55.1); sec. 301, 90 Stat. 1063, Pub. L. 94-373; sec. 1, 30 Stat. 35, as amended (16 U.S.C. 551))

[45 FR 80528, Dec. 5, 1980, as amended at 46 FR 2611, Jan. 12, 1981; 47 FR 746, Jan. 7, 1982. Redesignated at 49 FR 2761, Jan. 23, 1984]

§ 223.163 Determination that unprocessed timber is surplus to domestic needs.

Prior to a determination by the Secretary of Agriculture that a species, grade, or quantity of unprocessed timber is surplus to domestic needs, a public hearing shall be held to seek advice and counsel on the needs of domestic users and processors. Notice of any such determination shall be published in the FEDERAL REGISTER. Any determination of surplus timber may be withdrawn by the Secretary following a public notice which permits interested persons to comment. Public hearings will be conducted in accordance with the following procedures:

(a) Notice will be published in the FEDERAL REGISTER and in a newspaper of general circulation within the area affected by the proposed determination at least 15 days prior to the hearing and persons known to be interested will be notified directly.

(b) The time, place, and conduct of the hearing will be coordinated with the Department of the Interior and shall be at a convenient location within the area affected.

(c) The hearing record shall remain open for at least 10 calendar days following the hearing for receipt of additional written statements.

(Sec. 14, Pub. L. 95-588, 90 Stat. 2958, as amended (16 U.S.C. 472a); sec. 301, Pub. L. 96-126, 93 Stat. 979; sec. 1, 30 Stat. 35, as amended (16 U.S.C. 55.1); sec. 301, 90 Stat. 1063, Pub. L. 94-373; sec. 1, 30 Stat. 35, as amended (16 U.S.C. 551))

[45 FR 80528, Dec. 5, 1980; 47 FR 746, Jan. 7, 1982. Redesignated at 49 FR 2761, Jan. 23, 1984]

§ 223.164 Penalty for falsification.

For false certification of documents relating to export or substitution and/or other violations of export and substitution requirements by the purchaser of timber from National Forest System lands, the Forest Service may cancel the subject contract, debar the involved person or persons from bidding on National Forest timber, or initiate other action as may be provided by law or regulation.

(Sec. 14, Pub. L. 94-588, 90 Stat. 2958, as amended (16 U.S.C. 472a); Sec. 301, Pub. L. 96-126, 93 Stat. 979; Sec. 1, 30 Stat. 35, as amended (16 U.S.C. 55.1); Sec. 301, 90 Stat. 1063, Pub. L. 94-373; Sec. 1, 30 Stat. 35, as amended (16 U.S.C. 551); (44 U.S.C. 3506))

[45 FR 80528, Dec. 5, 1980. Redesignated at 49 FR 2761, Jan. 23, 1984, and amended at 51 FR 40316, Nov. 6, 1986]

Subpart E—Federal Timber Contract Payment Modification Program

AUTHORITY: 16 U.S.C. 472a, 16 U.S.C. 618.

SOURCE: 50 FR 26666, June 27, 1985, unless otherwise noted.

§ 223.170 Definitions.

The terms used in this subpart have the following meaning:

Act. The Federal Timber Contract Payment Modification Act.

Affiliate. Concerns are affiliates if directly or indirectly, (a) either one controls or has the power to control the other, or (b) one or more third parties controls or has the power to control both. In determining whether or not affiliation exists, the Forest Service shall consider all appropriate factors, including, but not limited to, common ownership, common management, and contractual relationships. Concerns affiliated at any time during the period of June 1, 1984, through September 30, 1984, shall be considered affiliated for purposes of determining purchaser's net book worth and volume entitlement.

Provided further, A purchaser forming an affiliate after September 30, 1984, and prior to the time when the purchaser determined its net book worth, shall treat such organization as an affiliate for purposes only of determining its net book worth. The Forest Service will determine the effect of joint venture agreements upon affiliation on a case-by-case basis based upon the nature of the relationship established by the joint venture.

Bureau of Land Management Qualifying Contract. Any Bureau of Land Management contract that qualifies for a buy out pursuant to the regulations of the Secretary of the Interior issued to implement the act.

Buy-Out Cost, Buy-Out Charge. The payment prescribed by section 223.176 of this subpart for each one thousand board feet, or equivalent, of net merchantable sawtimber to be bought out. It does not include any payments, deposits, claims, or costs required by or under the timber sale contracts involved or payments for deterioration of felled timber on the ground.

Concern. Any business entity whether organized for profit or not. *Concern* includes but is not limited to an individual, joint venture, partnership, corporation, association, or cooperatives.

Conditionally Returned Contract. An otherwise qualified timber sale contract under which harvest or road construction required by the contract has begun, but on which either harvest operations or road construction has not yet been completed to a logical stopping point and on which the purchaser must complete specified requirements before the contract can be bought out.

Contract Closure. (a) Where the contracting officer has asserted no contract claim prior to Forest Service release of the contract from further obligations (§ 223.178(b)), or where the claim is for damages for failure to cut: Execution of an agreement by both the contracting officer and the holder of a contract approved for closure by the Regional Forester releasing both parties from further rights and obligations under that contract.

(b) Where claim(s) by the Government remain unresolved: Execution of an agreement by both the contracting officer and the holder of the contract releasing the holder only from the obligation to cut, remove, and pay for timber and retaining all other rights and obligations of the contract until the specified claim(s) are finally resolved.

Contract Holder. As of a given date, the concern having the right to harvest timber included in a Forest Service timber sale contract resulting from either contract award or transfer of the contract by execution of an approved third party agreement. The contract holder as of the date of default is the contract holder of a qualified defaulted contract.

Contracts on which Harvesting Has Begun. Any qualifying contract or qualified defaulted contract on which the purchaser has initiated any contractually controlled items requiring felling trees, road construction or other ground disturbing activities.

Contract Overbid. The difference between the weighted average advertised contract rate for the remaining net merchantable sawtimber volume under contract to be bought out and the weighted average rate the purchaser bid for such remaining net merchantable sawtimber volume.

Contracting Officer. The designated Forest Service officer with authority to administer and make determinations with respect to a particular timber sale contract.

Current Contract Return. The current contract rates as defined and specified in a Forest Service timber sale contract.

Current Delivered Log Cost. The Forest Service of Bureau of Land Management estimate (developed to determine the purchaser's loss on a timber sale) of the cost, including payment at current contact rates, to a purchaser of average efficiency to produce and deliver net merchantable sawtimber logs from that sale.

Current Delivered Log Value. The Forest Service or Bureau of Land Management estimate (developed in order to determine a purchaser's loss on a timber sale) of the value of delivered net merchantable sawtimber logs from that sale.

Current Market Rate. The average rate bid by species for National Forest timber in the applicable appraisal zone during the period October 1, 1984, through March 31, 1985.

Defaulted Contract. An uncompleted Forest Service timber sale contract that has expired, or has been abandoned or repudiated by the purchaser, or has been cancelled by the Forest Service pursuant to a breach of the contract by the purchaser. The date of default in such circumstances is the date of expiration, abandonment, repudiation or cancellation, as applicable.

Effective Purchaser Credit. Unused, earned purchaser credit that does not exceed *Current Contract Value* minus *Base Rate Value* as defined in Forest Service timber sale contracts.

Independent Certified Public Accountant. An individual, professional corporation, or partnership of individuals, licensed under State law to render an opinion as to whether financial statements have been presented fairly in conformity with generally accepted accounting principles, and not an employee of the applicant or of an affiliate of the applicant.

Logical Stopping Point. The point of accomplishment, as determined by the Regional Forester after contracting officer's consultation with the purchaser, to which a purchaser must timely complete contractually required work. Such point shall, as determined by the Forest Service, include removal of felled timber at current contract rates or payment for deterioration of felled timber at current market rates if the felled timber is not subject to a priority removal date, or payment for the felled timber lost to deterioration at current contract rates if the timber is subject to a priority removal date.

Net Book Worth. The excess of assets (using historical cost-basis accounting principles) over liabilities, as determined using generally accepted accounting principles consistently applied. For a corporation, net book worth represent the shareholders' equity. For a partnership, net book worth represents the sum of the partners' capital accounts. For a proprietorship, net book worth represents the owner's proprietorship account for that business concern. The worth so determined shall be adjusted if necessary so as to eliminate any anticipated losses or gains on any outstanding, uncut Federal timber sale contract. For a purchaser with affiliates, net book worth shall be aggregated for that purchaser and its affiliates.

Net Merchantable Sawtimber. That volume of timber included in Forest Service timber sales generally characterized as *logs* or *sawlogs* or following normal Regional practices and meeting the utilization standards stated in provisions A-2, AT-2, or 2 of Forest Service timber sale contracts. Cull logs, pulpwood, and the other materials listed in provisions A-2, AT-2, or 2, or otherwise designated for removal, that are not characterized as *logs* or *sawlogs* are not net merchantable sawtimber.

Purchaser. A contract holder of either (a) a qualifying contract; (b) a qualified defaulted contract; or (c) a Bureau of Land Management qualifying contract.

Purchaser Credit. The credit earned pursuant to a Forest Service timber sale contract for construction of specified roads or as otherwise provided in such contracts.

Purchaser's Aggregate Loss. The result of aggregating the purchaser's loss, whether negative or positive, on all the qualifying contracts, qualified defaulted contracts and Bureau of Land Management qualifying contracts held by the purchaser and affiliates on June 1, 1984.

Purchaser's Loss. The result of subtracting the current delivered log value from the current delivered log cost on the volume of net merchantable sawtimber, as of September 30, 1984, on a qualifying contract, qualified defaulted contract, or Bureau of Land Management qualifying contract held by the purchaser on June 1, 1984.

Qualified Defaulted Contract. An otherwise qualifying contract which was defaulted after January 1, 1981, and which, regardless of whether timber in the contract has been resold, meets the following conditions:

(a) Settlement for damages has not been reached between the purchaser and the United States.

(b) The purchaser's aggregate loss as determined under these rules exceeds 50 percent of the purchaser's net book worth.

Qualifying Contract. A Forest Service timber sale contract, containing net merchantable sawtimber volume, bid prior to January 1, 1982, for an original contract period of 10 years or less, and which was held by the requesting purchaser on June 1, 1984. Only for purposes of buying out a contract, the contract must also be currently held by the requesting purchaser.

Remaining Net Merchantable Sawtimber Volume. The volume of net merchantable sawtimber which has not been removed from the sale area under a timber sale contract as of a given date.

Residual Value Appraisal. A procedure used to determine fair market value of national forest system timber by subtracting the anticipated production costs of an operator of average efficiency from the selling values of products normally manufactured from the timber to be sold.

Special Report. A report prepared by an independent certified public accountant in a format prescribed by the Forest Service.

Transaction Evidence Appraisal. A procedure used to determine fair market value of national forest system timber by comparing a prospective timber sale with previously sold sales of similar timber and the values bid for these sales.

Volume Entitlement. The aggregate volume of Bureau of Land Management and Forest Service net merchantable sawtimber that may be bought out under the act.

§ 223.171 Application for contract buy out.

(a) *Application.* Within 90 days of final publication of these rules any purchaser wishing to apply for contract buy out shall fully and accurately provide all of the following information on a form provided by the Forest Service to the Regional Forester of the Region in which the purchaser elects to buy out the greatest volume of national forest timber:

(1) Names and addresses of all affiliates, except that a purchaser electing not to provide net book worth does not need to list affiliates who do not purchase Federal timber.

(2) A list of all qualifying contracts, qualified defaulted contracts and Bureau of Land Management qualifying contracts held by the purchaser and its affiliates on June 1, 1984,

except that the list of such contracts provided by a purchaser electing not to provide net book worth does not need to include more than 400 million board feet of net merchantable sawtimber. This list shall include the timber sale name, contract number, bid date, and the purchaser's estimate of remaining net merchantable sawtimber volume on January 1, 1982, September 30, 1984, and on the date of application for contract buy out. The purchaser shall designate those sales that the purchaser held on June 1, 1984, and on the date of application for contract buy out that are requested to be bought out. The sum of the net merchantable sawtimber volume requested to be bought out by the purchaser and the net merchantable sawtimber volume requested to be bought out by affiliates of the purchaser shall be within the affiliates' combined volume entitlement. Purchasers whose buy-out cost is believed to be at the rates specified in § 223.176(a)(3) shall indicate the buy-out cost rate or rates believed applicable to each contract or volume under the contract to be bought out, whichever is applicable.

(3) If purchaser is in bankruptcy, evidence of approval by the bankruptcy court presiding over purchaser's bankruptcy of the application, or any revisions to that application, and of the method of payment of the buy-out cost.

(4) If the purchaser requests buy out of a timber sale which is subject to an assignment in trust, evidence of the assignee's approval of the application, and/or any revision thereof.

(5) If the purchaser requests to reduce the total volume in contracts requested to be bought out to 200 million board feet pursuant to § 223.173(d)(2), information on the timber to be purchased under a specified contract.

(6) If a purchaser requests to buy out of a sale that is included in the harvest schedule of an approved multisale extension plan, an agreement that the purchaser will revise that harvest schedule to delete the contracts approved for return, and to provide for proportionate harvest of the volume remaining in the harvest schedule; and that the purchaser shall make this revision within 45 days of receipt of the Forest Service approval of its application for contract buy out. The revision shall be subject to Forest Service approval.

(b) *Election to provide net book worth.* A purchaser electing to qualify for a buy-out cost other than the amounts specified in § 223.176(a)(3), or to include a defaulted contract for calculation of volume entitlement, or to return a defaulted contract shall establish the combined net book worth of it and its affiliates. Net book worth for purchasers or their affiliates which are publicly held corporations shall be as of the date of their most recent annual report filed prior to publication of this rule on Form 10-K with the Securities and Exchange Commission. Net book worth for purchasers or their affiliates which are not publicly held corporations shall be as of the purchaser's or affiliate's most recent fiscal year end for which a financial statement has been prepared prior to publication of this rule and be of a date of no more than 15 months prior to the date of purchaser's application for contract buy out. A purchaser shall submit the following net book worth supporting data as part of its application for contract buy out:

(1) A statement of net book worth in a format prescribed by the Forest Service.

(2) A special report covering the determination of net book worth for the purchaser and its affiliates made by an independent certified public accountant reported in a format acceptable to the Forest Service.

(3)(i) For purchasers or their affiliates that are publicly held corporations, a copy of the most recent annual reports, prior to the publication of this rule, filed on Form 10-K with the Securities and Exchange Commission.

(ii) For purchasers or their affiliates which are not publicly held corporations, a copy of the most recent fiscal year end for which a financial statement has been prepared prior to the publication of this rule, balance sheets along with any accompanying footnotes, reviewed or audited by the independent certified public accountant referred to in preceding paragraph (b)(2) of this section. All balance sheets submitted under this paragraph shall have been prepared and dated no more than 15 months prior to the date of purchaser's application for contract buy out.

(4) The name, address, and telephone number of the independent certified public accountant(s) that determined the net book worth(s).

(5) An agreement that the purchaser (i) will retain for 3 years from the date of purchaser's application for contract buy out the accounting records used to develop its financial statements for the determination of net book worth, including the independent certified public accountant's audit or review reports that are associated with the balance sheets used in determining net book worth, and (ii) will make such information available, upon request, for verification by authorized respresentatives of the U.S. Government.

(6) A statement signed by the purchaser or, in the case of a corporate purchaser, by its chief executive officer, certifying under penalty of 18 U.S.C. 1001 that the information provided in support of the determination of net book worth is complete and accurate.

(7) Where a purchaser has filed for bankruptcy and can demonstrate to the satisfaction of the Regional Forester that it cannot provide financial statements as set forth above, the purchaser may submit a notarized copy of the documentation or financial statements required by and used in the bankruptcy proceedings to establsih the purchaser's net book worth.

(c) *Additional information.* At Forest Service request, the purchaser must provide clarification of information submitted in the application for contract buy out.

(Approved by the Office of Management and Budget under control number 0596-0092)

§ 223.172 Approval of application for contract buy out.

(a) *Regional Forester review.* The Regional Forester to whom the application for contract buy out is submitted shall determine (1) the qualifications of contracts listed, (2) volume entitlement, (3) purchaser's loss on each qualifying contract and on each qualified defaulted contract, (4) purchaser's aggregate loss, (5) remaining net merchantable sawtimber volume applicable to the buy-out program, (6) total buy-out cost, and (7) the conditions and limitations on the return of qualifying contracts and qualified defaulted contracts. The Regional Forester shall notify the purchaser of these determinations.

(b) *Amended application for contract buy out.* (1) A purchaser may submit an amended application for contract buy out within 30 days after receipt of notification of:

(i) The Regional Forester's determination that a contract elected for buy out is not a qualifying contract, is not a qualified defaulted contract, or, except for rejection of a conditionally returned contract for failure to timely complete contract obligations to a logical stopping point, is ineligible to be a conditionally returned contract;

(ii) The Bureau of land Management's determination of the conditions, if any, that must be met for a conditionally returned contract to be accepted for buy out.

(iii) The Regional Forester's determination of the conditions, if any, that must be met for a conditionally returned contract to be accepted for buy out.

(2) Rejection of a conditionally returned contract for failure to timely complete contract obligations to a logical stopping point is not a basis for an amended application for contract buy out. If a purchaser wishes to amend its Forest Service application for contract buy out in response to Bureau of Land Management notification, the purchaser must submit a copy of the Bureau of Land Management's notification with its amended application.

(3) A purchaser may submit only one amended application for contract buy out unless the Regional Forester determines that good cause exists and the reason(s) for further modification of the application was not reasonably foreseeable.

(c) *Application approval.* The Regional Forester will approve an application for contract buy out upon the determination that:

(1) The contracts used for calculation of volume entitlement, purchaser's loss and the request for buy out are qualifying contracts, qualified defaulted contracts, or Bureau of Land Management qualifying contracts, that meet the applicable requirements established by these regulations;

(2) The volume of net merchantable sawtimber requested for buy out does not exceed the purchaser's and affiliates' volume entitlement; and,

(3) The information contained in the application for contract buy out appears accurate and complete.

§ 223.173 Volume entitlement.

(a) *Basis for entitlement.* The Regional Forester shall calculate volume entitlement based on the remaining net merchantable sawtimber volume, as of January 1, 1982, in otherwise qualifying contracts, qualified defaulted contracts, and Bureau of Land Management qualifying contracts held by the purchaser and its affiliates on June 1, 1984. For purposes of determining volume entitlement, the concern holding the contract as of June 1, 1984, need not be the same party holding the contract as of January 1, 1982.

(b) *Holders of more than 27.3 million board feet.* A purchaser and its affiliate(s) holding qualifying contracts, qualified defaulted contracts, or Bureau of Land Management qualifying contracts on June 1, 1984, with a total volume, as of January 1, 1982, of more than 27.3 million board feet of net merchantable sawtimber are entitled to buy out up to 55 percent of the net merchantable sawtimber volume up to a maximum of 200 million board feet.

(c) *Holders of 27.3 million board feet or less.* A purchaser and its affiliate(s) holding qualifying contracts, qualified defaulted contracts, or Bureau of Land Management qualifying contracts on June 1, 1984, with a total volume, as of January 1, 1982, of 27.3 million board feet or less of net merchantable sawtimber are entitled to buy out up to 15 million board feet of the net merchantable sawtimber volume or one contract which includes such net merchantable sawtimber, whichever is greater in volume.

(d) *Volume exceptions.* (1) Provided the maximum volume of 200 million board feet is not exceeded, the percentage limitation of paragraph (b) of this section or the volume limitation of paragraph (c) of this section may be exceeded by a volume amount no greater than the volume of the smallest volume contract requested for buy out by the purchaser and its affiliates only where a purchaser and its affiliate(s) could not otherwise attain the percentage or volume entitlement.

(2) If a purchaser and its affiliate(s) cannot otherwise attain the full volume eligible for buy out, a purchaser may reduce the volume of a qualifying contract under which harvest has begun by removing and paying for at current contract rates, or by paying current contract rates under the contract, for so much of the volume in the contract as would cause the total volume being bought out by the purchaser and its affiliates to exceed 200 million board feet of net merchantable sawtimber. The purchaser must indicate on its application the sale on which this option will be exercised and whether the conditional return of this sale will be based on removal and payment, or just payment for the excess volume. If purchaser removes timber to reduce volume below 200 million board feet, such operations must be brought to a logical stopping point.

§ 223.174 Purchaser's loss.

(a) *Data to be used.* To calculate a purchaser's loss per unit of volume on a contract, the Regional Forester will use information from the most recent Forest Service appraisal of that qualifying contract or qualified defaulted contract, updated to the Forest Service appraisal data effective on October 16, 1984.

(b) *Calculation with residual value appraisals.* The Forest Service will calculate the current delivered log cost of the net merchantable sawtimber in a qualifying contract or qualified defaulted contract by adding the updated appraised logging costs to the current contract rates for such timber and then multiplying that sum by the remaining net merchantable sawtimber volume on that contract as of

September 30, 1984. The current delivered log value of such a contract will be calculated by subtracting the updated appraised manufacturing costs, and their associated profit and risk allowances, from the updated appraised selling values and then multiplying that result by the remaining net merchantable sawtimber volume on that contract as of September 30, 1984.

(c) *Calculation with transaction evidence appraisals.* The current delivered log cost is the product of the current contract rates and the remaining net merchantable sawtimber volume on that contract as of September 30, 1984. The current delivered log value is the product of the updated appraised value and the remaining net merchantable sawtimber volume on that contract as of September 30, 1984.

(d) *Bureau of Land Management qualifying contracts.* The Regional Forester to whom the application for contract buy out is submitted will obtain the Bureau of Land Management authorized officer's determination of the purchaser's loss or gain on any Bureau of Land Management qualifying contracts included in the application for contract buy out. This loss or gain shall be added to the purchaser's total loss or gain on Forest Service sales to determine purchaser's aggregate loss.

§ 223.175 Remaining net merchantable sawtimber volume.

(a) *Responsibility.* The contracting officer will estimate the remaining net merchantable sawtimber volume on a qualifying contract or qualified defaulted contract on each applicable date specified in this subpart and provide this information to the Regional Forester to whom an application for buy out has been submitted. The Regional Forester will confirm these volume estimates for use in calculations associated with determining volume entitlement, volume to be bought out, and purchaser's buy-out cost.

(b) *Contracts with less than one-half the net merchantable sawtimber volume removed.* If less than one-half of the advertised net merchantable sawtimber volume, as adjusted by any contract modification, on a qualifying contract or qualified defaulted contract has been removed, the remaining net merchantable sawtimber volume will be calculated by subtracting the net merchantable sawtimber volume removed as of the specified date from the advertised volume, as adjusted by any subsequent contract modification, of such timber.

(c) *Contracts with one-half or more of the net merchantable sawtimber removed.* If one-half or more of the advertised net merchantable sawtimber volume, as adjusted by any contract modification, on a qualifying contract or qualified defaulted contract has been removed as of the specified date, the contracting officer will estimate the remaining net merchantable sawtimber volume. The contracting officer will fully document the basis for any volume estimate different from that derived by the procedure described in paragraph (b) of this section. If the purchaser disagrees with the contracting officer's estimate of remaining net merchantable sawtimber volume, the purchaser, at its expense, may have the remaining volume estimated by an independent qualified party acceptable to the contracting officer, using methods acceptable to the contracting officer. Upon verification and agreement by the contracting officer, the independent party's estimate of remaining net merchantable sawtimber volume will then be submitted to the Regional Forester for use associated with determining volume entitlement and purchaser's buy-out cost. If the contracting officer does not agree with the independent party's estimate of remaning net merchantable sawtimber volume, the contracting officer will document the reasons. The contracting officer will send the independent part's estimate, the contracting officer's estimate of the remaining volume, and the reasons for not agreeing to the independent estimate to the Regional Forester for use in determining the remaining volume.

§ 223.176 Buy-out cost.

(a) *Calculation with net book worth.* The buy-out cost shall be calculated as follows:

(1) If a purchaser's aggregate loss exceeds 100 percent of its net book worth, the buy-out cost shall be $10 for each thousand board feet of currently held volume to be bought out;

(2) If a purchaser's aggregate loss is in excess of 50 percent up to 100 percent of net book worth, the buy-out cost for each thousand board feet of currently held volume to be bought out shall be either equal to 10 percent of the contract overbid for each contract bought out, or $10, whichever is more;

(3) If a purchaser's aggregate loss is 50 percent or less of net book worth, the buy-out cost shall be determined on the basis of percentages in 25 million board feet increments according to the following scale:

(i) For the first 125 million board feet, the buy-out cost for each thousand board feet of currently held volume to be bought out shall be either equal to 15 percent of the contract overbid for each contract bought out, or $10, whichever is more;

(ii) For any amount above 125 million board feet, up to 150 million board feet, the buy-out cost for each thousand board feet of currently held volume to be bought out shall be either equal to 20 percent of the contract overbid for each contract bought out, or $10, whichever is more;

(iii) For any amount above 150 million board feet, up to 175 million board feet, the buy-out cost for each thousand board feet of currently held volume to be bought out shall be either equal to 25 percent of the contract overbid for each contract bought out, or $10, whichever is more; and,

(iv) For any amount above 175 million board feet, up to 200 million board feet, the buy-out cost for each thousand board feet of currently held volume to be bought out shall be either equal to 30 percent of the contract overbid for each contract bought out, or $10, whichever is more;

(4) A Regional Forester may divide a contract into parts and apply a different buy-out cost to each part if this is necessary to comply with the 25 million board feet increments in paragraph (a)(3) of this section.

(b) *Calculation without net book worth.* If a purchaser and its affiliates elect not to supply the net book worth information required in section 223.171(b), the applicable buy out cost shall be calculated in the same increments and percentages as prescribed in paragraphs (a)(3) (i) through (iv) of this section.

§ 223.177 Conditions and limitations on return of timber sale contracts.

(a) *Contracts on which no harvesting has begun.* A contract on which no harvesting has begun and which is to be bought out pursuant to this subpart shall be returned in full.

(b) *Contracts on which harvesting has begun.* For contracts on which harvesting has begun and which are requested to be bought out pursuant to this subpart, the Regional Forester has the discretion: (1) To conditionally accept return of the contract contingent upon the purchaser completing specified contractual operations, including work on roads, to logical stopping points prior to the contract being eligible for buy out, (2) to accept the contract for return after determining no additional work is necessary to complete specified contractual obligations, including work on roads, to logical stopping points, or (3) to reject return of the contract because the remaining unharvested volume is substantially unrepresentative of the original sale as a whole in terms of species, logging methods, or other appropriate criteria and accepting the return of such a contract would seriously disadvantage the Government. The Regional Forester shall document the determination as to whether or not the unharvested volume is substantially representative or unrepresentative of the original sale as a whole, and whether or not, if unrepresentative, return of the contract would seriously disadvantage the Government.

(c) *Logical stopping point.* The Forest Service will accept a conditionally returned contract for buy out only after the purchaser has completed contractual obligations for the units on which harvest has begun, including road construction, to logical stopping points. The purchase shall return in full cutting units on which harvest has not begun. A logical stopping point shall include payment at current contract rates and applicable charges, including interest due on charges and deferred payments, for all material included in the timber sale contract that is removed from the sale area by the purchaser. A logical stopping point shall also include removal of any felled timber on the ground or payment at current contract rates for the volume of any such timber lost by deterioration which was subject to a priority removal requirement. Payment for the volume of other felled timber lost by deterioration shall be at current market rates and payment shall be in addition to payment of the normal buy-out cost which includes payment for the entire volume to be bought out, including the volume lost by deterioration. The Forest Service will establish the volume of felled timber on the ground and the volume of the deteriorated timber. If the purchaser disagrees with the Forest Service's determination of the volume of felled timber or the volume lost to deterioration, the purchaser, at its expense, may have the volumes estimated by a qualified independent party acceptable the contracting officer, using methods acceptable to the contracting officer. Upon verification and agreement by the contracting officer, the independent party's estimate of the volume of the felled timber and/or the deterioration volume loss shall be submitted to the Regional Forester for determination of the deterioration payment. If the contracting officer does not agree with the independent party's estimate of the volume of felled timber and/or the deterioration loss, the contracting officer will document the reasons for not agreeing with the independent estimate. The contracting officer will send the independent party's estimate and the contracting officer's estimate of the volume of felled timber and the deterioration loss, and the reasons for lack of agreement to the Regional Forester for the Regional Forester's use in determining the deterioration payment.

(d) ***Remedy for breach.*** Before the Forest Service will accept a conditionally returned contract for buy out, the purchaser shall remedy any contract breach or other aspect in which work performed to date is not in full compliance with the terms of the contract, except that a contract not in default but in breach only because of failure to pay extension deposits, and/or removal schedule payments, shall become eligible for buy out when payment of the full amount of interest due up to the date the purchaser's buy out application is received by the Regional Forester.

(e) *Time limits.* After consultation with the purchaser with respect to each conditionally returned contract, the contracting officer will recommend, and the Regional Forester will establish reasonable dates for the purchaser to complete such contracts to a logical stopping point. Such dates will be specified as part of the approval of the conditional return. Failure to complete requirements by the established dates shall result in rejection of a conditionally returned contract unless the Regional Forester determines the delay is caused by factors beyond control of the purchaser. A purchaser may, upon notification from the Regional Forester of the conditions, if any, that must be met in order for a conditionally returned contract to be accepted for buy out, submit an amended application for contract buy out in accordance with § 223.172(b).

(f) *Final volume for buy-out cost.* The remaining net merchantable sawtimber volume as of the date of purchaser's application for contract buy out shall be used to calculate the buy-out cost except that the remaining net merchantable sawtimber volume used to determine the buy-out cost for a conditionally returned contract shall not include volume removed and paid for as a condition for buy out of the contract.

(g) *Multi-sale extension plans.* A purchaser who requests buy out of a contract that is included in the harvest schedule of an approved multi-sale extension plan shall revise that harvest schedule within 45 days after receipt of the Forest Service approval of its application for contract buy out. The purchaser shall delete the contracts that are approved for return from the harvest schedule, and provide for proportionate harvest of the volume remaining in the harvest schedule. The revision shall be subject to Forest Service approval. Failure to request and agree to a multi-sale extension plan revision in accordance with this paragraph, and to agree to the timber sale contract modifications that implement the plan revision, shall make a purchaser ineligible for any further contract extensions under the multi-sale extension program of December 7, 1983.

§ 223.178 Return of contracts.

(a) *Contractual obligations.* (1) Contractual obligations on a contract under which harvest has not begun and which the purchaser requests to buy out shall be held in abeyance as of the date the Regional Forester receives a purchaser's completed application for contract buy out prepared pursuant to § 223.171. The period of abeyance shall continue until the contract is released pursuant to paragraph (b) of this section or until the contract is determined to be unqualified for buy out. If a contract is determined to be unqualified for buy out, the purchaser shall be responsible for payment obligations and interest accruals otherwise arising during the period of abeyance.

(2) Contractual obligations on conditionally returned contracts will remain in full force and effect until released pursuant to paragraph (b) of this section, except that obligations to make payment for extension deposits, and removal schedule payments and payments for damages for failure to cut, and interest thereon, will be held in abeyance as of the date the Regional Forester receives a purchaser's completed application for contract buy out. The period of abeyance shall continue until the contract is released pursuant to paragraph (b) of this section or until the purchaser fails to meet the established conditions for return of the contract within the prescribed dates, or until the contract is determined to be unqualified for buy out. If purchaser fails to meet the conditions established by the Regional Forester for return of a conditionally return contract or it is determined that the contract is unqualified for buy out, the purchaser shall be responsible for all payment obligations and interest accruals otherwise arising during the period of abeyance.

(b) *Release from further obligations.* The Forest Service shall, by contract closure, release a purchaser from further obligations to cut, remove, and pay for timber under a returned contract upon:

(1) Timely payment or arrangement for payment (§ 223.181) of the applicable buy-out cost; and,

(2)(i) Timely fulfillment of any Government claim that arose under the contract (other than damages due to a purchaser's failure to cut under contract provisions B9.4, BT9.4 or 16) which has been asserted by the Contracting Officer prior to the Forest Service release from further obligations; or

(ii) Agreement to retain payment and performance guarantees under the contract pending resolution of the Government's claim.

(3) Timely completion of the conditions prescribed by the Regional Forester if the contract is a conditionally returned contract (§ 223.177); and

(4) Release of the Government from all claims arising from the returned contract.

(5) Purchaser's return of the executed closure papers within 30 calendar days of receipt of the closure agreement from the Contracting Officer or by July 26, 1988, whichever date is later.

(6) Failure to fulfill any of the requirements set forth in paragraphs (b) (1) through (5) of this section will result in rejection of the applicable contract(s) from this buy-out program, unless the Regional Forester determines the delay was caused by the purchaser being physically incapable of timely satisfying these requirements. Rejection of contracts for failure to fulfill any of the requirements set forth in paragraph (b) (1) through (5) of this section in a timely manner is not a basis for an amended application for contract buy out.

[50 FR 26666, June 27, 1985, as amended at 53 FR 15038, Apr. 27, 1988]

§ 223.179 Alternate method of payment.

(a) *Quarterly buy-out payments.* If a purchaser is unable to obtain sufficient credit at reasonable rates and terms to finance the buy-out cost, the purchaser, on or before the 60th calendar day after the final date for submitting application for contract buy out and upon establishing inability to obtain sufficient credit elsewhere, and upon payment of 5 percent of the estimated buy-out cost, may execute a promissory note on a form provided by the Forest Service, to pay the remainder of the estimated buy-out cost in equal quarterly payments over a period not to exceed 5 years with interest calculated on the outstanding remainder of the buy-out cost at an interest rate adjusted at each payment equal to the average market yield of outstanding Treasury obligations with remaining years to maturity of 5 years. Nothing shall prohibit purchaser's pre-payment at the date for any quarterly payment of all or a portion of the outstanding remainder of the buy-out cost. To guarantee payment, purchaser must provide an acceptable surety bond on a form provided by the Forest Service, or provide an irrevocable letter of credit, or securities of the United States, in an amount sufficient to cover the entire buy-out payment. A purchaser may amend the promissory note and payment guarantee furnished pursuant to this section if the final buy-out cost (§ 223.176) is different from the estimated buy-out cost calculated by the Regional Forester pursuant to § 223.181.

(b) *Alternate payment eligibility establishment.* To establish inability to obtain sufficient credit elsewhere, a purchaser must provide a written statement, on a from provided by the Forest Service, from at least two Federal or state chartered financial institutions engaged in providing financing to the timber industry, and one from the lending institution with which the purchaser usually transacts business. The statement from the lending institution shall state with such institution is the one with which the purchaser usually transacts business. Each statement must show that the purchaser has, upon application in form and detail acceptable to the lending institution, been denied a loan from the lending institution for all or part of the amount equal to the total buy-out cost at an interest rate within 3 percentage points above the then current average market yield of outstanding Treasury obligations with remaining years to maturity of 5 years. The statement must be signed by an authorized officer of the institution. The purchaser must state whether or not it has received a loan during the period beginning six months prior to the publication of this rule and ending on the date of the purchaser's application for contract buy out at an interest rate within 3 percentage points above the current average market yield of outstanding Treasury obligations with remaining years to maturity of 5 years. If the purchaser has received such a loan, the purchaser shall make details of the loan available upon Forest Service request.

§ 223.180 Credits against buy-out charges.

Upon purchaser's request, a contracting officer will credit against the buy out charge certain unobligated credits, as determined by the contracting officer, in the timber sale account of Forest Service contracts the Regional Forester has approved for buy out. Examples of such credits include earned, unused effective purchaser credit, where appropriate, and unencumbered cash deposits.

§ 223.181 Buy-out payments.

The Regional Forester shall bill a purchaser for the total estimate buy-out cost for Forest Service contracts requested for buy out. The Regional Forester shall calculate the billings on the estimated final volume for buy-out cost (§ 223.177(f)). The Regional Forester shall make such billing no sooner than 30 calendar days after the final date for submitting applications for contract buy out. The purchaser shall make buy-out cost payment, including any initial payment as provided for in § 223.179(a), to the Regional Forester on or before the 60th calendar day after the final date for submitting applications for contract buy out. Purchaser shall make any subsequent payments under § 223.179(a) within 30 calendar days of receipt of the billing. A purchaser's obligation under this section for timely payment of buy-out costs is not affected by the filling of an amended application for contract buy out pursuant to § 223.172(b), or by the filing of a corrected application for contract buy out, or by a request for administrative review pursuant to § 223.182, or by other dispute relating to either the contract or administration of the buy out program. If the Regional Forester has not received the buy-out cost payment, including the initial payment as provided for in § 223.179(a) by the 60th calendar day after the final date for submitting applications for contract buy out, the purchaser shall pay late payment charges on the outstanding billed amount as prescribed in the Debt Collection Act of 1982. The late payment charges will accrue from the 60th calendar day after the final date for submitting applications for contract buy out. The Regional Forester shall issue refunds or supplemental billings as necessary if the final buy-out cost differs from the amont charged in the initial estimated billing.

§ 223.182 Disputes.

Forest Service administrative decisions implementing the procedures of this subpart are subject to administrative review under 36 CFR 211.18.

§ 223.183 Emergency rate redeterminations in Alaska.

(a) *Eligible contracts.* Holders of 50-year timber sale contracts in Alaska are not eligible for emergency rate redeterminations under the provisions of this section. All other holders of closed and current timber sale contracts in Alaska bid between January 1, 1974, and July 31, 1985, excluding timber settlement contracts, are eligible for emergency rate redeterminations under this section.

(b) *Application.* Purchasers must make written application for emergency rate redeterminations to the Contracting Officer. The Contracting Officer will make emergency stumpage rate redetermination on eligible contracts. Existing contract provisions will apply except as they may be modified pursuant to paragraph (c) of this section.

(c) *Modification of existing contracts.* If necessary, to provide for rates that are competitive with other purchasers of national forest timber in Alaska, the Forest Service may modify existing payment terms of contracts eligible under paragraph (a), including reduction of bid premiums and the reduction of established base rates.

(d) *Effective date of new rates.* Rates established for stumpage as a result of emergency rate redeterminations on qualifying timber sale contracts shall be effective for timber scaled, or, in the case of tree measurement sales, timber released for cutting, from January 1, 1981, through October 15, 1989.

(e) *Refunds.* If the Contracting Officer determines that, as a result of an emergency rate redetermination, the credit balance of a timber sale account exceeds the charges for timber estimated to be cut in the next 60 calendar days, the Forest Service upon the purchaser's request, may refund the cash portion of such excess that is attributable to the redetermined contract rates.

(f) *Future sales.* Timber sales in Alaska advertised after July 31, 1985 shall provide for an emergency rate redetermination in accordance with standard Forest Service timber sale contract procedures, except that completion of a scheduled rate redetermination shall not be required as a prerequisite for the emergency rate redetermination.

[50 FR 30936, July 31, 1985]

PART 228—MINERALS

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AUTHORITY: 30 Stat. 35 and 36, as amended (16 U.S.C. 478, 551); 41 Stat. 437, as amended, sec. 5102(d), 101 Stat. 1330-256 (30 U.S.C. 226); 61 Stat. 914, as amended (30 U.S.C. 352).

SOURCE: 39 FR 31317, Aug. 28, 1974, unless otherwise noted. Redesignated at 46 FR 36142, July 14, 1981.

Subpart A—Locatable Minerals

§ 228.1 Purpose.

It is the purpose of these regulations to set forth rules and procedures through which use of the surface of National Forest System lands in connection with operations authorized by the United States mining laws (30 U.S.C. 21-54), which confer a statutory right to enter upon the public lands to search for minerals, shall be conducted so as to minimize adverse environmental impacts on National Forest System surface resources. It is not the purpose of these regulations to provide for the management of mineral resources; the responsibility for managing such resources is in the Secretary of the Interior.

§ 228.2 Scope.

These regulations apply to operations hereafter conducted under the United States mining laws of May 10, 1872, as amended (30 U.S.C. 22 *et seq.*), as they affect surface resources on all National Forest System lands under the jurisdiction of the Secretary of Agriculture to which such laws are applicable: *Provided, however,* That any area of National Forest lands covered by a special Act of Congress (16 U.S.C. 482a–482q) is subject to the provisions of this part and the provisions of the special act, and in the case of conflict the provisions of the special act shall apply.

§ 228.3 Definitions.

For the purposes of this part the following terms, respectively, shall mean:

(a) *Operations.* All functions, work, and activities in connection with prospecting, exploration, development, mining or processing of mineral resources and all uses reasonably incident thereto, including roads and other means of access on lands subject to the regulations in this part, regardless of whether said operations take place on or off mining claims.

(b) *Operator.* A person conducting or proposing to conduct operations.

(c) *Person.* Any individual, partnership, corporation, association, or other legal entity.

(d) *Mining claim.* Any unpatented mining claim or unpatented millsite authorized by the United States mining laws of May 10, 1872, as amended (30 U.S.C. 22 *et seq.*).

(e) *Authorized officer.* The Forest Service officer to whom authority to review and approve operating plans has been delegated.

§ 228.4 Plan of operations—notice of intent—requirements.

(a) Except as provided in paragraph (a)(2) of this section, a notice of intention to operate is required from any person proposing to conduct operations which might cause disturbance of surface resources. Such notice of intention shall be submitted to the District Ranger having jurisdiction over the area in which the operations will be conducted. If the District Ranger determines that such operations will likely cause significant disturbance of surface resources, the operator shall submit a proposed plan of operations to the District Ranger.

(1) The requirements to submit a plan of operations shall not apply: (i) To operations which will be limited to the use of vehicles on existing public roads or roads used and maintained for National Forest purposes, (ii) to individuals desiring to search for and occasionally remove small mineral samples or specimens, (iii) to prospecting and sampling which will not cause significant surface resource disturbance and will not involve removal of more than a reasonable amount of mineral deposit for analysis and study, (iv) to marking and monumenting a mining claim and (v) to subsurface operations which will not cause significant surface resource disturbance.

(2) A notice of intent need not be filed: (i) Where a plan of operations is submitted for approval in lieu thereof, (ii) for operations excepted in paragraph (a)(1) of this section from the requirement to file a plan of operations, (iii) for operations which will not involve the use of mechanized earthmoving equipment such as bulldozers or backhoes and will not involve the cutting of trees. Each notice of intent to operate shall provide information sufficient to identify the area involved, the nature of the proposed operations, the route of access to the area of operations and the method of transport. If a notice of intent is filed, the District Ranger will, within 15 days of receipt thereof, notify the operator whether a plan of operations is required.

(b) Any person conducting operations on the effective date of these regulations, who would have been required to submit a plan of operations under § 228.4(a), may continue operations but shall within 120 days thereafter submit a plan of operations to the District Ranger having jurisdiction over the area within which operations are being conducted: *Provided, however,* That upon a showing of good cause the authorized officer will grant an extension of time for submission of a plan of operations, not to exceed an additional 6 months. Operations may continue according to the submitted plan during its review, unless the authorized officer determines that the operations are unnecessarily or unreasonably causing irreparable damage to surface resources and advises the operator of those measures needed to avoid such damage. Upon approval of a plan of operations, operations shall be conducted in accordance with the approved plan. The requirement to submit a plan of operations shall not apply: (1) To operations excepted in § 228.4(a) or (2) to operations concluded prior to the effective date of the regulations in this part.

(c) The plan of operations shall include:

(1) The name and legal mailing address of the operators (and claimants if they are not the operators) and their lessees, assigns, or designees.

(2) A map or sketch showing information sufficient to locate the proposed area of operations on the ground, existing and/or proposed roads or access routes to be used in connection with the operations as set forth in § 228.12 and the approximate location and size of areas where surface resources will be disturbed.

(3) Information sufficient to describe or identify the type of operations proposed and how they would be conducted, the type and standard of existing and proposed roads or access routes, the means of transportation used or to be used as set forth in § 228.12, the period during which the proposed activity will take place, and measures to be taken to meet the requirements for environmental protection in § 228.8.

(d) The plan of operations shall cover the requirements set forth in paragraph (c) of this section, as foreseen for the entire operation for the full estimated period of activity: *Provided, however,* That if the development of a plan for an entire operation is not possible at the time of preparation of a plan, the operator shall file an initial plan setting forth his proposed operation to the degree reasonably foreseeable at that time, and shall thereafter file a supplemental plan or plans whenever it is proposed to undertake any significant surface disturbance not covered by the initial plan.

(e) At any time during operations under an approved plan of operations, the authorized officer may ask the operator to furnish a proposed modification of the plan detailing the means of minimizing unforeseen significant disturbance of surface resources. If the operator does not furnish a proposed modification within a time deemed reasonable by the authorized officer, the authorized officer may recommend to his immediate superior that the operator be required to submit a proposed modification of the plan. The recommendation of the authorized officer shall be accompanied by a statement setting forth in detail the supporting facts and reasons for his recommendations. In acting upon such recommendation, the immediate superior of the authorized officer shall determine: (1) Whether all reasonable measures were taken by the authorized officer to predict the environmental impacts of the proposed operations prior to approving the operating plan, (2) whether the disturbance is or probably will become of such significance as to require modification of the operating plan in order to meet the requirements for environmental protection specified in § 228.8 and (3) whether the disturbance can be minimized using reasonable means. Lacking such determination that unforeseen significant disturbance of surface resources is occurring or probable and that the disturbance can be minimized using reasonable means, no operator shall be required to submit a proposed modification of an approved plan of operations. Operations may continue in accordance with the approved plan until a modified plan is approved, unless the immediate superior of the authorized officer determines that the operations are unnecessarily or unreasonably causing irreparable injury, loss or damage to surface resources and advises the operator of those measures needed to avoid such damage.

(f) Upon completion of an environmental analysis in connection with each proposed operating plan, the authorized officer will determine whether an environmental statement is required. Not every plan of operations, supplemental plan or modification will involve the preparation of an environmental statement. Environmental impacts will vary substantially depending on whether the nature of operations is prospecting, exploration, development, or processing, and on the scope of operations (such as size of operations, construction required, length of operations and equipment required), resulting in varying degrees of disturbance to vegetative resources, soil, water, air, or wildlife. The Forest Service will prepare any environmental statements that may be required.

(g) The information required to be included in a notice of intent or a plan of operations, or supplement or modification thereto, has been assigned Office of Management and Budget Control #0596-0022. The public reporting burden for this collection of information is estimated to vary from a few minutes for an activity involving little or no surface disturbance to several months for activities involving heavy capital investments and significant surface disturbance, with an average of 2 hours per individual response. This includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief (2800), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

[39 FR 31317, Aug. 28, 1974. Redesignated at 46 FR 36142, July 14, 1981, and amended at 54 FR 6893, Feb. 15, 1989]

§ 228.5 Plan of operations—approval.

(a) Operations shall be conducted in accordance with an approved plan of operations, except as provided in paragraph (b) of this section and in § 228.4 (a), (b), and (e). A proposed plan of operation shall be submitted to the District Ranger, who shall promptly acknowledge receipt thereof to the operator. The authorized officer shall, within thirty (30) days of such receipt, analyze the proposal, considering the economics of the operation along with the other factors in determining the reasonableness of the requirements for surface resource protection, and;

(1) Notify the operator that he has approved the plan of operations; or

(2) Notify the operator that the proposed operations are such as not to require an operating plan; or

(3) Notify the operator of any changes in, or additions to, the plan of operations deemed necessary to meet the purpose of the regulations in this part; or

(4) Notify the operator that the plan is being reviewed, but that more time, not to exceed an additional sixty (60) days, is necessary to complete such review, setting forth the reasons why additional time is needed: *Provided, however,* That days during which the area of operations is inaccessible for inspection shall not be included when computing the sixty (60) day period; or

(5) Notify the operator that the plan cannot be approved until a final environmental statement has been prepared and filed with the Council on Environmental Quality as provided in § 228.4(f).

(b) Pending final approval of the plan of operations, the authorized officer will approve such operations as may be necessary for timely compliance with the requirements of Federal and State laws, so long as such operations are conducted so as to minimize environmental impacts as prescribed by the authorized officer in accordance with the standards contained in § 228.8.

(c) A supplemental plan or plans of operations provided for in § 228.4(d) and a modification of an approved operating plan as provided for in § 228.4(e) shall be subject to approval by the authorized officer in the same manner as the initial plan of operations: *Provided, however,* That a modification of an approved plan of operations under § 228.4(e) shall be subject to approval by the immediate superior of the authorized officer in cases where it has been determined that a modification is required.

(d) In the provisions for review of operating plans, the Forest Service will arrange for consultation with appropriate agencies of the Department of the Interior with respect to significant technical questions concerning the character of unique geologic conditions and special exploration and development systems, techniques, and equipment, and with respect to mineral values, mineral resources, and mineral reserves. Further, the operator may request the Forest Service to arrange for similar consultations with appropriate agencies of the U.S. Department of the Interior for a review of operating plans.

§ 228.6 Availability of information to the public.

Except as provided herein, all information and data submitted by an operator pursuant to the regulations in this part shall be available for examination by the public at the Office of the District Ranger in accordance with the provisions of 7 CFR 1.1-1.6 and 36 CFR 200.5-200.10. Specifically identified information and data submitted by the operator as confidential concerning trade secrets or privileged commercial or financial information will not be available for public examination. Information and data to be withheld from public examination may include, but is not limited to, known or estimated outline of the mineral deposits and their location, attitude, extent, outcrops, and content, and the known or planned location of exploration pits, drill holes, excavations pertaining to location and entry pursuant to the United States mining laws, and other commercial information which relates to competitive rights of the operator.

§ 228.7 Inspection, noncompliance.

(a) Forest Officers shall periodically inspect operations to determine if the operator is complying with the regulations in this part and an approved plan of operations.

(b) If an operator fails to comply with the regulations or his approved plan of operations and the noncompliance is unnecessarily or unreasonably causing injury, loss or damage to surface resources the authorized officer shall serve a notice of noncompliance upon the operator or his agent in person or by certified mail. Such notice shall describe the noncompliance and shall specify the action to comply and the time within which such action is to be completed, generally not to exceed thirty (30) days: *Provided, however,* That days during which the area of operations is inaccessible shall not be included when computing the number of days allowed for compliance.

§ 228.8 Requirements for environmental protection.

All operations shall be conducted so as, where feasible, to minimize adverse environmental impacts on National Forest surface resources, including the following requirements:

(a) *Air Quality.* Operator shall comply with applicable Federal and State air quality standards, including the requirements of the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*).

(b) *Water Quality.* Operator shall comply with applicable Federal and State water quality standards, including regulations issued pursuant to the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151 *et seq.*).

(c) *Solid Wastes.* Operator shall comply with applicable Federal and State standards for the disposal and treatment of solid wastes. All garbage, refuse, or waste, shall either be removed from National Forest lands or disposed of or treated so as to minimize, so far as is practicable, its impact on the environment and the forest surface resources. All tailings, dumpage, deleterious materials, or substances and other waste produced by operations shall be deployed, arranged, disposed of or treated so as to minimize adverse impact upon the environment and forest surface resources.

(d) *Scenic Values.* Operator shall, to the extent practicable, harmonize operations with scenic values through such measures as the design and location of operating facilities, including roads and other means of access, vegetative screening of operations, and construction of structures and improvements which blend with the landscape.

(e) *Fisheries and Wildlife Habitat.* In addition to compliance with water quality and solid waste disposal standards required by this section, operator shall take all practicable measures to maintain and protect fisheries and wildlife habitat which may be affected by the operations.

(f) *Roads.* Operator shall construct and maintain all roads so as to assure adequate drainage and to minimize or, where practicable, eliminate damage to soil, water, and other resource values. Unless otherwise approved by the authorized officer, roads no longer needed for operations: (1) Shall be closed to normal vehicular traffic, (2) bridges and culverts shall be removed, (3) cross drains, dips, or water bars shall be constructed, and (4) the road surface shall be shaped to as near a natural contour as practicable and be stabilized.

(g) *Reclamation.* Upon exhaustion of the mineral deposit or at the earliest practicable time during operations, or within 1 year of the conclusion of operations, unless a longer time is allowed by the authorized officer, operator shall, where practicable, reclaim the surface disturbed in operations by taking such measures as will prevent or control onsite and off-site damage to the environment and forest surface resources including:

(1) Control of erosion and landslides;

(2) Control of water runoff;

(3) Isolation, removal or control of toxic materials;

(4) Reshaping and revegetation of disturbed areas, where reasonably practicable; and

(5) Rehabilitation of fisheries and wildlife habitat.

(h) Certification or other approval issued by State agencies or other Federal agencies of compliance with laws and regulations relating to mining operations will be accepted as compliance with similar or parallel requirements of these regulations.

§ 228.9 Maintenance during operations, public safety.

During all operations operator shall maintain his structures, equipment, and other facilities in a safe, neat and workmanlike manner. Hazardous sites or conditions resulting from operations shall be marked by signs, fenced or otherwise identified to protect the public in accordance with Federal and State laws and regulations.

§ 228.10 Cessation of operations, removal of structures and equipment.

Unless otherwise agreed to by the authorized officer, operator shall remove within a reasonable time following cessation of operations all structures, equipment and other facilities and clean up the site of operations. Other than seasonally, where operations have ceased temporarily, an operator shall file a statement with the District Ranger which includes: (a) Verification of intent to maintain the structures, equipment and other facilities, (b) the expected reopening date, and (c) an estimate of extended duration of operations. A statement shall be filed every year in the event operations are not reactivated. Operator shall maintain the operating site, structures, equipment and other facilities in a neat and safe condition during nonoperating periods.

§ 228.11 Prevention and control of fire.

Operator shall comply with all applicable Federal and State fire laws and regulations and shall take all reasonable measures to prevent and suppress fires on the area of operations and shall require his employees, contractors and subcontractors to do likewise.

§ 228.12 Access.

An operator is entitled to access in connection with operations, but no road, trail, bridge, landing area for aircraft, or the like, shall be constructed or improved, nor shall any other means of access, including but not limited to off-road vehicles, be used until the operator has received approval of an operating plan in writing from the authorized officer when required by § 228.4(a). Proposals for construction, improvement or use of such access as part of a plan of operations shall include a description of the type and standard of the proposed means of access, a map showing the proposed route of access, and a description of the means of transportation to be used. Approval of the means of such access as part of a plan of operations shall specify the location of the access route, design standards, means of transportation, and other conditions reasonably necessary to protect the environment and forest surface resources, including measures to protect scenic values and to insure against erosion and water or air pollution.

§ 228.13 Bonds.

(a) Any operator required to file a plan of operations shall, when required by the authorized officer, furnish a bond conditioned upon compliance with § 228.8(g), prior to approval of such plan of operations. In lieu of a bond, the operator may deposit into a Federal depository, as directed by the Forest Service, and maintain therein, cash in an amount equal to the required dollar amount of the bond or negotiable securities of the United States having market value at the time of deposit of not less than the required dollar amount of the bond. A blanket bond covering nationwide or statewide operations may be furnished if the terms and conditions thereof are sufficient to comply with the regulations in this part.

(b) In determining the amount of the bond, consideration will be given to the estimated cost of stabilizing, rehabilitating, and reclaiming the area of operations.

(c) In the event that an approved plan of operations is modified in accordance with § 228.4 (d) and (e), the authorized officer will review the initial bond for adequacy and, if necessary, will adjust the bond to conform to the operations plan as modified.

(d) When reclamation has been completed in accordance with § 228.8(g), the authorized officer will notify the operator that performance under the bond has been completed: *Provided, however,* That when the Forest Service has accepted as completed any portion of the reclamation, the authorized officer shall notify the operator of such acceptance and reduce proportionally the amount of bond thereafter to be required with respect to the remaining reclamation.

[39 FR 31317, Aug. 28, 1974; 39 FR 32029, Sept. 4, 1974]

§ 228.14 Appeals.

Any operator aggrieved by a decision of the authorized officer in connection with the regulations in this part may file an appeal under the provisions of 36 CFR Part 251, Subpart C.

[54 FR 3362, Jan. 23, 1989]

§ 228.15 Operations within National Forest Wilderness.

(a) The United States mining laws shall extend to each National Forest Wilderness for the period specified in the Wilderness Act and subsequent establishing legislation to the same extent they were applicable prior to the date the Wilderness was designated by Congress as a part of the National Wilderness Preservation System. Subject to valid existing rights, no person shall have any right or interest in or to any mineral deposits which may be discovered through prospecting or other information-gathering activity after the legal date on which the United States mining laws cease to apply to the specific Wilderness.

(b) Holders of unpatented mining claims validly established on any National Forest Wilderness prior to inclusion of such unit in the National Wilderness Preservation System shall be accorded the rights provided by the United States mining laws as then applicable to the National Forest land involved. Persons locating mining claims in any National Forest Wilderness on or after the date on which said Wilderness was included in the National Wilderness Preservation System shall be accorded the rights provided by the United States mining laws as applicable to the National Forest land involved and subject to provisions specified in the establishing legislation. Persons conducting operations as defined in § 228.3 in National Forest Wilderness shall comply with the regulations in this part. Operations shall be conducted so as to protect National Forest surface resources in accordance with the general purposes of maintaining the National Wilderness Preservation System unimpaired for future use and enjoyment as wilderness and to preserve its wilderness character, consistent with the use of the land for mineral location, exploration, development, drilling, and production and for transmission lines, water lines, telephone lines, and processing operations, including, where essential, the use of mechanized transport, aircraft or motorized equipment.

(c) Persons with valid mining claims wholly within National Forest Wilderness shall be permitted access to such surrounded claims by means consistent with the preservation of National Forest Wilderness which have been or are being customarily used with respect to other such claims surrounded by National Forest Wilderness. No operator shall construct roads across National Forest Wilderness unless authorized in writing by the Forest Supervisor in accordance with § 228.12.

(d) On all mining claims validly established on lands within the National Wilderness Preservation System, the operator shall take all reasonable measures to remove any structures, equipment and other facilities no longer needed for mining purposes in accordance with the provisions in § 228.10 and restore the surface in accordance with the requirements in § 228.8(g).

(e) The title to timber on patented claims validly established after the land was included within the National Wilderness Preservation System remains in the United States, subject to a right to cut and use timber for mining purposes. So much of the mature timber may be cut and used as is needed in the extraction, removal, and beneficiation of the mineral deposits, if needed timber is not otherwise reasonably available. The cutting shall comply with the requirements for sound principles of forest management as defined by the National Forest rules and regulations and set forth in stipulations to be included in the plan of operations, which as a minimum incorporate the following basic principles of forest management:

(1) Harvesting operations shall be so conducted as to minimize soil movement and damage from water runoff; and

(2) Slash shall be disposed of and other precautions shall be taken to minimize damage from forest insects, disease, and fire.

(f) The Chief, Forest Service, shall allow any activity, including prospecting, for the purpose of gathering information about minerals in National Forest Wilderness except that any such activity for gathering information shall be carried on in a manner compatible with the preservation of the wilderness environment as specified in the plan of operations.

Subpart B—Leasable Minerals

§§ 228.20–228.39 [Reserved]

Subpart C—Disposal of Mineral Materials

SOURCE: 49 FR 29784, July 24, 1984, unless otherwise noted.

§ 228.40 Authority.

Authority for the disposal of mineral materials is provided by the Materials Act of July 31, 1947 (30 U.S.C. 601 et seq.), as amended by the Acts of August 31, 1950 (30 U.S.C. 603–604), July 23, 1955 (30 U.S.C. 601, 603), and September 25, 1962 (30 U.S.C. 602), and by the following: the Act of June 4, 1897 (16 U.S.C. 477); the Act of March 4, 1917 (16 U.S.C. 520); the Bankhead-Jones Farm Tenant Act of July 22, 1937 (7 U.S.C. 1010); the Act of September 1, 1949 (section 3) (30 U.S.C. 192c); the Act of June 30, 1950 (16 U.S.C. 508b); the Act of June 28, 1952 (section 3) (66 Stat. 285); the Act of September 2, 1958 (16 U.S.C. 521a); the Act of June 11, 1960 (74 Stat. 205); the Federal Highway Act of August 27, 1958 (23 U.S.C. 101 et seq.); and the Alaska National Interest Lands Conservation Act of December 2, 1980 (section 502) (16 U.S.C. 539a).

§ 228.41 Scope.

(a) *Lands to which this subpart applies.* This subpart applies to all National Forest System lands reserved from the public domain of the United States, including public domain lands being administered under the Bankhead-Jones Farm Tenant Act of July 22, 1937 (7 U.S.C. 1010); to all National Forest System lands acquired pursuant to the Weeks Act of March 1, 1911 (36 Stat. 961); to all National Forest

System lands with Weeks Act status as provided in the Act of September 2, 1958 (16 U.S.C. 521a); and to public lands within the Copper River addition to the Chugach National Forest (16 U.S.C. 539a). For ease of reference and convenience to the reader, these lands are referred to, throughout this subpart, as "National Forest lands."

(b) *Restrictions.* Disposal of mineral materials from the following National Forest lands is subject to certain restrictions as described below:

(1) *Segregation or withdrawals in aid of other agencies.* Disposal of mineral materials from lands segregated or withdrawn in aid of a function of another Federal agency, State, territory, county, municipality, water district, or other governmental subdivision or agency may be made only with the written consent of the governmental entity.

(2) *Segregated or withdrawn National Forest lands.* Mineral materials may not be removed from segregated or withdrawn lands where removal is specifically prohibited by statute or by public land order. Where not specifically prohibited, removal of mineral materials may be allowed if the authorized officer determines that the removal is not detrimental to the values for which the segregation or withdrawal was made, except as provided in paragraph (b)(1) of this section. Where operations have been established prior to the effective date of this Subpart and where not prohibited by statute, they may be permitted to continue. Nothing in this subparagraph is intended to prohibit the exercise of valid existing rights.

(3) *Unpatented mining claims.* Provided that claimants are given prior notice and it has been determined that removal will neither endanger nor materially interfere with prospecting, mining, or processing operations or uses reasonably incident thereto on the claims, disposal of mineral materials may be allowed from:

(i) Unpatented mining claims located after July 23, 1955; and/or

(ii) Unpatented mining claims located before July 23, 1955, and on which the United States has established the right to manage the vegetative and other surface resources in accordance with the Multiple Use Mining Act of July 23, 1955 (30 U.S.C. 601, 603, 611-615).

(4) *Acquired Bankhead-Jones lands.* Mineral materials on lands which were acquired under the authority of the Bankhead-Jones Farm Tenant Act of July 22, 1937 (7 U.S.C. 1010-1012), and which lie outside the exterior boundaries of National Forests, or on acquired lands which are being administered under the Act and which also lie outside the exterior boundaries of National Forests, may be disposed of under these regulations only to public authorities and agencies, and only on condition that the mineral materials are used for public purposes (7 U.S.C. 1011(c)).

§ 228.42 Definitions.

For the purposes of this subject, the following terms are defined:

Acquired National Forest lands. National Forest System lands acquired under the Weeks Act of March 1, 1911 (36 Stat. 961), and National Forest System lands with Weeks Act status as provided in the Act of September 2, 1958 (16 U.S.C. 521a).

Authorized officer. Any Forest Service officer to whom authority for disposal of mineral materials has been delegated.

Common-use area. Generally, a broad geographic area from which nonexclusive disposals of mineral materials available on the surface may be made to low volume and/or noncommercial users.

Community site. A site noted on appropriate Forest records and posted on the ground from which nonexclusive disposals of mineral materials may be made to low volume and/or noncommercial users.

Contract. A signed legal agreement between the Forest Service and a purchaser of mineral materials, which specifies (among other things) the conditions of a competitive, negotiated, or preference right sale of mineral materials to the purchaser.

Mineral materials. A collective term used throughout this Subpart to describe petrified wood and common varieties of sand, gravel, stone, pumice, pumicite, cinders, clay, and other similar materials. Common varieties do not include deposits of those materials which are valuable because of some property giving them distinct and special value, nor do they include "so-called 'block pumice'" which occurs in nature in pieces having one dimension of 2 inches or more.

Permit. A signed legal document between the Forest Service and one who is authorized to remove mineral materials free of charge, which specifies (among other things) the conditions of removal by the permittee.

Preference right negotiated sale. A negotiated sale which may be awarded in response to the finding and demonstration of a suitable deposit of mineral material on acquired National Forest lands as the result of exploratory activity conducted under the authority of a prospecting permit.

Prospecting permit. A written instrument issued by the Forest Service which authorizes prospecting for a mineral material deposit on acquired National Forest lands within specific areas, under stipulated conditions, and for a specified period of time.

Single entry source. A source of mineral materials which is expected to be depleted under a single contract or permit or which is reserved for Forest Service use.

Unpatented mining claim. A lode or placer mining claim or a millsite located under the General Mining Law of 1872, as amended (30 U.S.C. 21-54), for which a patent under 30 U.S.C. 29 and regulations of the Department of the Interior has not been issued.

Withdrawn National Forest lands. National Forest System lands segregated or otherwise withheld from settlement, sale, location, or entry under some or all of all of the general land laws (43 U.S.C. 1714).

§ 228.43 Policy governing disposal.

(a) *General.* Forest Service policy is to make mineral materials on National Forest lands available to the public and to local, State, and Federal government agencies where reasonable protection of, or mitigation of effects on, other resources in assured, and where removal is not prohibited.

(1) A contract or permit limits processing of the mineral material onsite to the first salable product.

(2) Additional onsite processing may be authorized by a separate permit (36 CFR 251.50).

(3) The authorized officer must ensure that an environmental analysis is conducted for all planned disposals of mineral materials.

(4) Decisions to authorize the disposal of mineral materials must conform to approved land and resource management plans (36 CFR 219.22).

(b) *Price.* Mineral materials may not be sold for less than the appraised value. The authorized officer may assess a fee to cover costs of issuing and administering a contract or permit.

(c) *Conservation.* Adequate measures must be taken to protect, and minimize damage to the environment. Mineral materials may be disposed of only if the authorized officer determines that the disposal is not detrimental to the public interest.

(d) *Ownership.* Title to the mineral materials vests in the purchaser or permittee immediately before excavation, subject to the provisions of §§ 228.47 through 228.56 and other provisions of the contract or permit. Title to excavated material not removed within the time provided revests in the United States.

§ 228.44 Disposal on existing Federal leased areas.

Mineral material contracts or permits may be issued within existing areas leased or under permit under the 1920 Mineral Leasing Act, as amended (30 U.S.C. 181-187); section 402 of Reorganization Plan No. 3 of 1946 (5 U.S.C. Appendix); the 1947 Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351 et seq.); and the 1970 Geothermal Steam Act (30 U.S.C. 1001-1025), provided that it has been determined that removal will neither endanger nor unreasonably interfere with lease operations, and provided further that the lease terms do not prohibit disposal.

§ 228.45 Qualifications of applicants.

The authorized officer may require applicants for prospecting permits, negotiated contracts, or free-use permits or bidders for the sale of mineral materials to furnish information necessary to determine their ability to perform the obligations of the contract or permit.

§ 228.46 Application of other laws and regulations.

All mining operations for removal of mineral materials from National Forest lands must meet or exceed applicable Federal standards for the protection of public safety, health, and the environment, and must also meet or exceed State and local standards for the protection of public safety, health, and the environment, to the extent that such standards are not in conflict with Federal purposes and functions.

GENERAL PROVISIONS

§ 228.47 General terms and conditions of contracts and permits.

(a) *Disposal of designated mineral materials.* Only those specified mineral materials found within the area designated in the contract or permit may be extracted and removed.

(b) *Unauthorized removal (trespass) of mineral materials.* The removal of mineral materials from National Forest lands, except when authorized in accordance with applicable law and regulations of the Department of Agriculture, is prohibited (36 CFR 261.9).

(c) *Conservation.* Mineral material contracts and permits must contain provisions to ensure the efficient removal and conservation of the mineral material.

(d) *Improvements.* Contracts and permits must contain provisions for removal or Government retention of improvements.

(e) *Use of existing National Forest development roads.* The authorized officer may require purchasers and permittees to obtain appropriate road-use permits, make deposits for or perform their commensurate share of road maintenance, and comply with road-use rules contained in 36 CFR Part 212, depending upon their planned extent of road use.

(f) *Reclamation.* Requirements for reclamation of areas disturbed by mineral material operations must be included in contracts and permits, except for disposals from community sites and common-use areas.

§ 228.48 Appraisal and measurement.

(a) *Appraisal.* All mineral materials for sale must be appraised to determine fair market value. Appraisals must be based on knowledge of the extent of the deposit, quality of material, and economic value. A sale must not be made at less than the appraised value which may be expressed as either price per cubic yard or weight equivalent. In all cases the units of measurement must correspond to the units used in the appraisal. The authorized officer must estimate and record the amount and value of minerals to be disposed of by free-use permit.

(b) *Measurement.* The amount of mineral material actually removed may be measured by volume, weight, truck tally, by combination of these methods, or by such other form of measurement as the authorized officer determines to be appropriate and in the public interest.

§ 228.49 Reappraisal.

If an extension of time is granted as provided in § 228.53(b), the authorized officer must reappraise or reestimate the mineral materials covered by the contract or permit and which remain unexcavated at the time of extension. The recalculated unit value becomes the new unit value for the remaining unexcavated material; excavated and stockpiled material is not subject to reappraisal.

§ 228.50 Production records.

At least annually, the purchaser or permittee must furnish a record of the volume extracted, in cubic yards or weight equivalent, to the authorized officer. The units of measurement must correspond to the units used in the appraisal or estimate.

§ 228.51 Bonding.

(a) *Bond requirements.* Before operations may begin under any contract or permit, a bond must be furnished to the authorized officer to ensure performance of payment (as necessary), reclamation, and other conditions of the contract or permit, except as noted in paragraphs (a) (1) and (3) of this section, where the authorized officer may waive such bonding. If an extension of time is granted as provided in § 228.53(b), the bond requirements must be recalculated and changed accordingly.

(1) For *advance payment contracts* for 10,000 cubic yards or more in volume (or weight equivalent), a bond of not less than 10 percent of the total contract price or the value of the estimated annual production (whichever is less), plus the reclamation cost for the area covered by annual mining, is required. When the total volume is less than 10,000 cubic yards, bond requirements, if any, are at the discretion of the authorized officer.

(2) For any *defered payment contract*, a bond equalling the value of the estimated annual production plus the reclamation cost for the area covered by annual mining is required.

(3) For *free use*, the authorized officer may require a reclamation bond which must be sufficient to cover the cost of reclamation of the anticipated annual work.

(b) *Types of bonding*. A bond must be one of the following:

(1) A bond of a corporate surety shown on the latest approved list issued by the U.S. Treasury Department and executed on an approved standard form;

(2) A cash bond;

(3) Negotiable securities of the United States;

(4) An irrevocable letter of credit acceptable to the Forest Service;

(5) A performance bond required by other Forest Service contracts or permits, provided the bond covers the performance and reclamation requirements related to the removal of mineral material from a designated pit or area for use in the performance of the contract or permit; or

(6) Any other types of bond specified in the Forest Service Manual.

§ 228.52 Assignments.

(a) *Limitations*. A purchaser or permittee may not assign the contract or permit, or any interest therein, without the written approval of the authorized officer.

(b) *Requirements of assignee*. The authorized officer will not approve any proposed assignment involving contract or permit performance unless the assignee:

(1) Submits information necessary to assure the authorized officer of the assignee's ability to meet the same requirements as the original purchaser or permittee (assignor); and

(2) Furnishes a bond or obtains a commitment from the previous surety to be bound by the assignment when approved.

(c) *Rights and obligations*. Once the authorized officer approves an assignment, the assignee is entitled to all the rights and is subject to all of the obligations under the contract or permit, and the original purchaser or permittee may be released from any further responsiblity under the contract or permit.

§ 228.53 Term.

(a) *Time allowed*. Except as provided in § 228.61(f), § 228.62(b), and elsewhere in this paragraph, a contract or permit may not exceed 1 year from the effective date of the contract or permit unless a written extension is obtained. For those mineral materials sold under a duration of production contract or under a contract for the sale of all mineral material within a specified area, or under a construction contract where removal cannot reasonably take place before completion of other work under the same contract, the authorized officer will establish a reasonable time period for removal.

(b) *Extension of time*. If it is shown that a delay in removal was due to causes beyond the control of the purchaser or permittee, the authorized officer may grant an extension, not to exceed 1 year, upon written request. Written requests for extensions of contracts must be received between 30 and 90 days before the expiration date of the contract. Written requests for extensions of permits must be received between 15 and 90 days before the permit expiration date. The authorized officer may grant a total of two extensions for contracts and permits.

§ 228.54 Single entry sales or permits.

The purchaser or permittee is required to reclaim a single entry source in accordance with an approved operating plan which describes operating procedures and reclamation measures, unless the requirement is waived by the authorized officer.

§ 228.55 Cancellation or suspension.

The authorized officer may cancel or suspend a contract, permit, or prospecting permit if the purchaser or permitte fails to comply with its terms and conditions. If the noncompliance is unnecessarily or unreasonably causing injury, loss, or damage to surface resources, the authorized officer may cancel or suspend the contract, permit, or prospecting permit immediately. In cases where noncompliance is of a less serious nature, the authorized officer may cancel or suspend a contract, permit, or prospecting permit it such noncompliance continues for 30 days after service of written notice by the authorized officer. If the noncompliance is not corrected, the authorized officer may attach the bond to ensure compliance with the provisions of the contract, permit, or prospecting permit.

§ 228.56 Operating plans.

Any surface-disturbing operation under a contract, permit, or prospecting permit is subject to prior approval by the authorized officer of an operating plan and to reasonable conditions as may be required to ensure proper protection of the environment and improvements, including timely reclamation of disturbed lands. Significant changes to operations require prior approval of an amended operating plan. The operating plan must include, as a minimum, a map and explanation of the nature of the access, anticipated activity, surface disturbance, and intended reclamation including removal or retention of structures and facilities. Operating plans must be submitted by the purchaser, permittee, or prospecting permittee, except as noted in § 228.64(b).

TYPES AND METHODS OF DISPOSAL

§ 228.57 Types of disposal.

Except as provided in § 228.41(b), disposal of mineral materials may be made by:

(a) *Competitive sale* to the highest qualified bidder after formal advertising and other appropriate public notice;

(b) *Sale by negotiated contract.* (1) For removal of materials to be used in connection with a public works improvement program on behalf of a Federal, State, or local government agency if the public exigency will not permit delays incident to advertising, or

(2) For the removal of mineral materials for which it is impracticable to obtain competition;

(c) *Preference right negotiated sale* to the holder of a Forest Service-issued prospecting permit under which a suitable mineral material deposit has been demonstrated on acquired National Forest lands;

(d) *Free use* when a permit is issued to any nonprofit association, corporation, individual, or others listed in § 228.62(d), for other than commercial purposes, resale, or barter, or to any Federal, State, county, local unit, subdivision, municipality, or county road district for use in public projects; or

(e) *Forest Service force account or by contract* where the material is to be used to carry out various Forest Service programs involving construction and maintenance of physical improvements.

§ 228.58 Competitive sales.

(a) *Invitation for bid.* Sales must be conducted as described below after inviting competitive bids through publication and posting. The authorized officer may not offer a competitive sale unless there is a right-of-way or other access to the sale area which is available to anyone qualified to bid.

(b) *Advertising*—(1) *Sales over 25,000 cubic yards.* Mineral material sales offered by competitive bidding and which exceed 25,000 cubic yards must be advertised on the same day once a week for two consecutive weeks in a newspaper of general circulation in the area where the material is located, and in a trade or industrial newspaper when considered appropriate. Notice of the sale must be posted in a conspicuous place in the office where bids are to be submitted. In addition, the authorized officer may send the advertisement directly to known interested persons. Bids may be received but not evaluated before the end of the advertising period, which may be extended at the discretion of the authorized officer.

(2) *Content of advertising.* The advertisement of sale must specify the location by legal description of the tract or tracts or by any other means identify the location of the mineral material deposit being offered, the kind of material, estimated quantities, the unit of measurement, appraised price (which sets the minimum acceptable bid), time and place for receiving and opening of bids, minimum deposit required, major special constraints due to environmental considerations, available access, maintenance required over haul routes, traffic controls, required use permits, required qualifications of bidders, the method of bidding, bonding requirement, notice of the right to reject any or all bids, the office where a copy of the contract and additional information may be obtained, and additional information the authorized officer deems necessary.

(3) *Advertising smaller sales.* Advertisement of mineral materials amounting to 25,000 cubic yards in volume (or weight equivalent) or less must be published and/or posted. The methods of advertisement are at the discretion of the authorized officer.

(c) *Conduct of sales.* (1) Bidding at competitive sales may be conducted by the submission of written sealed bids, oral bids, or a combination of both as directed by the authorized officer. In the event of a tie in high sealed bids, the highest bidder will be determined by oral auction among those tied bidders; when no oral bid is higher that the sealed bids, the selected bidder will be determined by lot, the purchase price being the amount of the tied bid. For all oral auctions, including those used to break sealed-bid ties, the high bidder must confirm the bid in writing immediately upon being declared the high bidder. The authorized officer must mail notification of the bidding results to all bidders within 10 days.

(2) The authorized officer may require bidders to furnish evidence of qualification at the time of award or, if such evidence has already been furnished and is still valid, make appropriate reference to the record containing it.

(3) When it is in the interest of the United States to do so, the authorized officer may reject any or all bids.

(d) *Bid deposits and award of contract.* Sealed bids must be accompanied by a deposit. For mineral materials offered at oral auction, bidders must make the deposit before opening of the bidding.

(1) Bid deposits must be equal to 10 percent of the appraised value but not less than $100.00.

(2) Bid deposits must be in the form of cash, money order, bank drafts, cashier's or certified checks made payable to the Forest Service, or bonds acceptable to the Forest Service (§ 228.51(b)).

(3) Upon conclusion of the bidding, the authorized officer will return the deposits of all unsuccessful bidders. The successful bidder's deposit will be applied toward the purchase price. If the contract is not awarded to the high bidder due to an inability to perform the obligations of the contract, the deposit, less expenses and damages incurred by the United States, may be returned. The return of a deposit does not prejudice any other rights or remedies of the United States. The contract may be offered and awarded to the next successive qualified high bidder, or, at the discretion of the authorized officer, the sale may be either readvertised or negotiated if it is determined that a competitive sale is impracticable.

(4) Within 30 days after receipt of the contract, the successful bidder must sign and return the contract, together with any required bond, unless the authorized officer has granted an extension for an additional 30 days. The bidder must apply for the extension in writing within the first 30-day

period. If the successful bidder fails to return the contract within the first 30-day period or within an approved extension, the bid deposit, less the costs of readvertising and damages, may be returned without prejudice to any other rights or remedies of the United States.

(5) All sales must be processed on Forest Service-approved contract forms. The authorized officer may add provisions to the contract to cover conditions peculiar to the sale area. Such additional provisions must be made available for inspection by prospective bidders during the advertising period.

§ 228.59 Negotiated or noncompetitive sales.

(a) *Volume limitations.* When it is determined by the authorized officer to be in the public interest and when it is impracticable to obtain competition, mineral materials not exceeding 100,000 cubic yards in volume (or weight equivalent) may be sold in any one sale at not less than the appraised value, without advertising or calling for bids, except as provided in paragraphs (b) and (c) of this section. The authorized officer may not approve noncompetitive sales that exceed the total of 200,000 cubic yards (or weight equivalent) made in any one State for the benefit of any applicant in any period of 12 consecutive months.

(b) *Government programs.* In connection with a public works improvement project on behalf of a Federal, State, or local governmental agency, the authorized officer may sell to an applicant, at not less than the appraised value, without advertising or calling for bids, a volume of mineral materials not to exceed 200,000 cubic yards (or weight equivalent) when the public exigency will not permit delays incident to advertising (30 U.S.C. 602).

(c) *Appropriation for highway purposes.* For interstate and/or Federal aid highways, the Secretary of Transportation may appropriate any volume in accordance with 23 U.S.C. 107 and 317.

(d) *Use in development of Federal mineral leases.* When it is determined to be impracticable to obtain competition and the mineral materials are to be used in connection with the development of mineral leases issued by the United States (§ 228.44), the authorized officer may sell to a leaseholder a volume of mineral material not to exceed 200,000 cubic yards (or weight equivalent) in one State in any period of 12 consecutive months. No charge will be made for materials which must be moved in the process of extracting the mineral under lease, as long as the materials remain stockpiled within the boundaries of the leased area.

(e) *Exceptions.* (1) The Chief of the Forest Service may authorize the noncompetitive sale of mineral materials in excess of the volume limitations in paragraphs (a), (b), and (d) of this section when necessary to:

(i) Respond to an emergency affecting public health, safety or property;

(ii) Prevent the curtailment of operations conducted under the United States mining laws of May 10, 1872, as amended (30 U.S.C. 22 et seq.) which generate large volumes of mineral materials as a by-product; or

(iii) Respond to a critical public need for the prompt development of a mineral lease issued by the United States or a mining claim located under the United States mining laws of May 10, 1872, as amended (30 U.S.C. 22 et seq.).

(2) Any noncompetitive sale of mineral materials in excess of the volume limitations in paragraphs (a), (b), and (d) shall be subject to such restrictions as the Chief of the Forest Service determines to be in the public interest.

(3) Nothing in this paragraph shall otherwise alter the requirements of paragraphs (a) through (d) of this section.

[49 FR 29784, July 24, 1984, as amended at 52 FR 10565, Apr. 2, 1987; 53 FR 43691, Oct. 28, 1988]

§ 228.60 Prospecting permits.

(a) *Right conferred.* On acquired National Forest lands, prospecting permits may be issued which grant the permittee the exclusive right to explore for and to demonstrate the existence of a suitable mineral material deposit when existing information is insufficient. After the demonstration of a suitable deposit and confirmation of this by the authorized officer, the permittee will have a preference right to apply for a negotiated sale.

(b) *Limitations.* Mineral material may be removed from lands under a prospecting permit only to the extent necessary for testing and analysis or for the demonstration of the existence of a suitable deposit.

(c) *Environmental analysis.* Prospecting permits will be issued only after submission by applicant and approval by the authorized officer of a detailed operating plan. The authorized officer may require a bond in accordance with § 228.51. The authorized officer must ensure compliance with the National Environmental Policy Act (42 U.S.C. 4321 et seq.).

(d) *Acreage and permit limitations.* A prospecting permit may not cover more than 640 acres. No individual or group may have an interest at any one time in more than three prospecting permits on Forest Service lands administered by one Forest Supervisor.

(e) *Duration and extension of permits.* Prospecting permits may be issued for a period not to exceed 24 months, but they may be extended once for up to an additional 24 months if necessary to complete prospecting. Any application for extension must be submitted no later than 30 days before the expiration of the permit. The application for extension must provide evidence of diligence and state the reasons why additional time is considered necessary to complete prospecting work.

(f) *Refusal to extend permits.* The authorized officer may reject applications for extension of prospecting permits for the following reasons:

(1) *Failure to perform.* Failure of the permittee to perform prospecting or exploration work without adequate justification may result in the denial of an extension; or

(2) *Failure to apply.* If an application for extension is not submitted within the specified period, the permit may expire without notice to the permittee.

(3) *Public interest.* If the authorized officer determines that an extension may not be in the public interest, the application may be rejected.

§ 228.61 Preference right negotiated sales.

(a) *Qualification for sale.* When applying for a preference right negotiated sale, the permittee must demonstrate to the satisfaction of the authorized officer that a suitable deposit of mineral material has been discovered within the area covered by the prospecting permit. Information concerning trade secrets and financial matters submitted by the permittee and identified as confidential will not be available for public examination except as otherwise agreed upon by the permittee.

(b) *Application for sale.* The application must be submitted to the District Ranger's office on or before the expiration date of the prospecting permit or its extension. The authorized officer may grant 30 additional days for submitting the application if requested in writing by the permittee before expiration of the prospecting permit or its extension.

(c) *Terms and conditions of contract.* The terms and conditions will be evaluated on an individual case basis. Only those mineral materials specified in the contract may be removed by the purchaser. Before a preference right negotiated contract is awarded, the authorized officer must ensure that an environmental analysis is conducted. All contracts are subject to the conditions under §§ 228.47 through 228.56.

(d) *Acreage limitations.* The authorized officer will determine the amount of acreage in the preference right negotiated sale based on a presentation of the permittee's needs. The maximum acreage allowable to any individual or group must not exceed 320 acres on National Forest lands administered by one Forest Supervisor. The allowable acreage may be in one or more units which are not necessarily contiguous.

(e) *Volume limitations.* Preference right negotiated sales are exempt from volume limitations.

(f) *Contract time allowable.* A contract or a renewal must not exceed 5 years; however, the purchaser may have renewal options at the end of each contract or renewal period. The authorized officer may renew a contract if it is determined that the renewal is not detrimental to the public interest and that the purchaser has demonstrated diligence in conducting operations. The authorized officer may cancel the contract, or the purchaser may forfeit the contract, if no substantial commercial production occurs during any continuous 2-year period after the award of the contract or if the contract terms and conditions are breached. However, if a delay is caused by conditions beyond the purchaser's control, the authorized officer may grant an extension equal to the lost time.

(g) *Contract renewal reappraisal.* At the time of contract renewal, the authorized officer will reappraise the mineral material deposit in accordance with § 228.49.

§ 228.62 Free use.

(a) *Application.* An application for a free-use permit must be made with the appropriate District Ranger's office.

(b) *Term.* Permits may be issued for periods not to exceed 1 year and will terminate on the expiration date unless extended by the authorized officer as in § 228.53(b). However, the authorized officer may issue permits to any local, State, Federal, or Territorial agency, unit or subdivision, including municipalities and county road districts, for periods up to 10 years.

(c) *Removal by agent.* A free-use permittee may extract the mineral materials through a designated agent provided that the conditions of the permit are not violated. No part of the material may be used as payment for the services of an agent in obtaining or processing the material. A permit may be issued in the name of a designated agent for those entities listed in § 228.62(d)(1), at the discretion of the authorized officer, provided there is binding agreement in which the entity retains responsibility for ensuring compliance with the conditions of the permit.

(d) *Conditions.* Free-use permits may be issued for mineral materials to settlers, miners, residents, and prospectors for uses other than commercial purposes, resale, or barter (16 U.S.C. 477). Free-use permits may be issued to local, State, Federal, or Territorial agencies, units, or subdivisions, including municipalities, or any association or corporation not organized for profit, for other than commercial or industrial purposes or resale (30 U.S.C. 601). Free-use permits may not be issued when, in the judgment of the authorized officer, the applicant owns or controls an adequate supply of mineral material in the area of demand. The free-use permit, issued on a Forest Service-approved form, must include the basis for the free-use as well as the provisions governing the selection, removal, and use of the mineral materials. No mineral material may be removed until the permit is issued. The permittee must notify the authorized officer upon completion of mineral material removal. The permittee must complete the reclamation prescibed in the operating plan (§ 228.56).

(1) A free-use permit may be issued to any local, State, Federal, or Territorial agency, unit, or subdivision, including municipalities and county road districts, without limitation on the number of permits or on the value of the mineral materials to be extracted or removed.

(2) A free-use permit issued to a nonprofit association, corporation, or individual may not provide for the removal of mineral materials having a volume exceeding 5,000 cubic yards (or weight equivalent) during any period of 12 consecutive months.

(e) *Petrified wood.* A free-use permit may be issued to amateur collectors and scientists to take limited quantities of petrified wood for personal use. The material taken may not be bartered or sold. Free-use areas may be designated within which a permit may not be required. Removal of material from such areas must be in accord with rules issued by the authorized officer and posted on the area. Such rules must also be posted in the District Ranger's and Forest Supervisor's offices and be available upon request. The rules may vary by area depending on the quantity, quality, and accessibility of the material and the demand for it.

§ 228.63 Removal under terms of a timber sale or other Forest Service contract.

In carrying out programs such as timber sales that involve construction and maintenance of various physical improvements, the Forest Service may specify that mineral materials be mined, manufactured, and/or processed for incorporation into the improvement. Where the mineral material is located on National Forest lands and is designated in the contract calling for its use, no permit is required as long as an operating plan as described in § 228.56 is required by the contract provisions. Title to any excavated material in excess of that needed to fulfill contract requirements revests in the United States without reimbursement to the contract holder or to agents or representatives of the contract holder. Such excess material may be disposed of under §§ 228.58, 228.59, or 228.62.

§ 228.64 Community sites and common-use areas.

(a) *Designation.* Nonexclusive disposals may be made from the same deposit or areas designated by the authorized officer; the designation of such an area and any reclamation requirements must be based on an environmental analysis.

(b) *Pit plans.* The Forest Service must prepare operating plans (§ 228.56) for the efficient removal of the material and for appropriate reclamation of community sites and common-use areas.

(c) *Reclamation.* The Forest Service is responsible for reclamation of community sites and common-use areas.

§ 228.65 Payment for sales.

(a) *Conditions.* Mineral materials may not be removed from the sale area until all conditions of payment in the contract have been met.

(b) *Advance payment.* (1) For negotiated and competitive sales the full amount may be paid before removal is begun under the contract or by installment at the discretion of the authorized officer. Installment payments must be based on the estimated removal rate specified in the operating plan and must be, as a minimum, the value of 1 month's removal. The first installment must be paid before removal operations are begun; remaining installments must be paid in advance of removal of the remaining materials as billed by the authorized officer. The total amount of the purchase price must be paid at least 60 days before the expiration date of the contract.

(2) All advance payment contracts must provide for reappraisal of the mineral material at the time of contract renewal or extension.

(3) Minimum annual production must be sufficient to return a payment to the United States equal to the first installment. In lieu of minimum production, there must be an annual payment in the amount of the first installment which will not be credited to future years' production. Payments for or in lieu of minimum annual production must be received by the authorized officer on or before the anniversary of the effective date of the contract.

(4) If the purchaser fails to make payments when due, the contract will be considered breached; the authorized officer will terminate the contract, and all previous payments will be forfeited without prejudice to any other rights and remedies of the United States. Forfeiture will not result when the purchaser is unable to meet the minimum annual production (volume or value) for reasons beyond the purchaser's control.

(5) In order to determine payment amount, the purchaser must make a report of operations. The report must include the amount of mineral material removed, which must be verified by the authorized officer.

(c) *Deferred payments.* The authorized officer may approve deferred payments for sales.

(1) The purchaser may make payments monthly or quarterly which must be based on the in-place value (volume or weight equivalent) of material removed during the contract period. The units of measurement must correspond to the units used in the appraisal. The purchaser must make all payments before contract renewal.

(2) The purchaser must deliver a bond which conforms to the provisions of § 228.51(a)(2) to the authorized offi-

cer before operations are begun under the contract.

§ 228.66 Refunds.

Upon termination of any contract, payments in excess of $10 may be refunded, less the costs incurred by the United States, under any of the following conditions:

(a) *Payment in excess of value.* If the total payment exceeds the value of the mineral material removed, unless it is the minimum annual payment in lieu of production;

(b) *Insufficiency of material.* If insufficient mineral material existed in the sale area to provide the quantity of material estimated to have been available;

(c) *Termination.* (1) If the contract is terminated by the authorized officer for reasons which are beyond the purchaser's control; or

(2) If the contract is terminated by mutual agreement. This refund provision is not a warranty that a specific quantity of material exists in the sale area.

§ 228.67 Information collection requirements.

(a) The following sections of this rule contain information collection requirements as defined in the Paperwork Reduction Act of 1980 (5 CFR 1320): § 228.45, Qualifications of applicants; § 228.51, Bonding; § 228.52(b)(1), Requirements of assignee; § 228.53(b), Extension of time; § 228.56, Operating plans; § 228.57(c), Conduct of sales; § 228.60, Prospecting permits; § 228.61, Preference right negotiated sales; and § 228.62, Free use.

(b) These requirements have been approved by the Office of Management and Budget and assigned clearance number 0596-0081.

Subpart D—Miscellaneous Minerals Provisions

§ 228.80 Operations within Misty Fjords and Admiralty Island National Monuments, Alaska.

(a) Mineral activities on valid mining claims in the Misty Fjords and Admiralty Island National Monuments must be conducted in accordance with regulations in Subpart A of this part and with the provisions of this section.

(b) Prior to approving a plan of operations, the authorized officer must consider:

(1) The resources of ecological, cultural, geological, historical, prehistorical, and scientific interest likely to be affected by the proposed operations, including access; and

(2) The potential adverse impacts on the identified resource values resulting from the proposed operations.

(c) A plan of operations will be approved if, in the judgment of the authorized officer, proposed operations are compatible, to the maximum extent feasible, with the protection of the resource values identified pursuant to paragraph (b)(1) of this section.

(1) The authorized officer will deem operations to be compatible if the plan of operations includes all feasible measures which are necessary to prevent or minimize potential adverse impacts on the resource values identified pursuant to paragraph (b)(1) of this section and if the operations are conducted in accordance with the plan.

(2) In evaluating the feasibility of mitigating measures, the authorized officer shall, at a minimum, consider the following:

(i) The effectiveness and practicality of measures utilizing the best available technology for preventing or minimizing adverse impacts on the resource values identified pursuant to paragraph (b)(1) of this section; and

(ii) The long- and short-term costs to the operator of utilizing such measures and the effect of these costs on the long- and short-term economic viability of the operations.

(3) The authorized officer shall not require implementation of mitigating measures which would prevent the evaluation or development of any valid claim for which operations are proposed.

(d) In accordance with the procedures described in Subpart A and paragraphs (c)(1) through (c)(3) of this section, the authorized officer may approve modifications of an existing plan of operations:

(1) If, in the judgment of the authorized officer, environmental impacts unforeseen at the time of ap-

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proval of the existing plan may result in the incompatibility of the operations with the protection of the resource values identified pursuant to paragraph (b)(1) of this section; or

(2) Upon request by the operator to use alternative technology and equipment capable of achieving a level of environmental protection equivalent to that to be achieved under the existing plan of operations.

[51 FR 20827, June 9, 1986]

Subpart E—Oil and Gas Resources

SOURCE: 55 FR 10444, Mar 21, 1990, unless otherwise noted.

§ 228.100 Scope and applicability.

(a) *Scope.* This subpart sets forth the rules and procedures by which the Forest Service of the United States Department of Agriculture will carry out its statutory responsibilities in the issuance of Federal oil and gas leases and management of subsequent oil and gas operations on National Forest System lands, for approval and modification of attendant surface use plans of operations, for monitoring of surface disturbing operations on such leases, and for enforcement of surface use requirements and reclamation standards.

(b) *Applicability.* The rules of this subpart apply to leases on National Forest System lands and to operations that are conducted on Federal oil and gas leases on National Forest System lands as of April 20, 1990.

(c) *Applicability of other rules.* Surface uses associated with oil and gas prospecting, development, production, and reclamation activities, that are conducted on National Forest System lands outside a leasehold must receive prior authorization from the Forest Service. Such activities are subject to the regulations set forth elsewhere in 36 CFR chapter II, including but not limited to the regulations set forth in 36 CFR parts 251, subpart B, and 261.

§ 228.101 Definitions.

For the purposes of this subpart, the terms listed in this section have the following meaning:

Authorized Forest officer. The Forest Service employee delegated the authority to perform a duty described in these rules. Generally, a Regional Forester, Forest Supervisor, District Ranger, or Minerals Staff Officer, depending on the scope and level of the duty to be performed.

Compliance Officer. The Deputy Chief, or the Associate Deputy Chiefs, National Forest System or the line officer designated to act in the absence of the Deputy Chief.

Leasehold. The area described in a Federal oil and gas lease, communitized, or unitized area.

Lessee. A person or entity holding record title in a lease issued by the United States.

National Forest System. All National Forest lands reserved or withdrawn from the public domain of the United States, all National Forest lands acquired through purchase, exchange, donation, or other means, the National Grasslands and land utilization projects administered under title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010 *et seq.*), and other lands, waters, or interests therein which are administered by the Forest Service or are designated for administration through the Forest Service as a part of the system (16 U.S.C. 1609).

Notices To Lessees, Transferees, and Operators. A written notice issued by the authorized Forest officer. Notices To Lessees, Transferees, and Operators implement the regulations in this subpart and serve as instructions on specific item(s) of importance within a Forest Service Region, National Forest, or Ranger District.

Onshore Oil and Gas Order. A formal numbered order issued by or signed by the Chief of the Forest Service that implements and supplements the regulations in this subpart.

Operating right. The interest created out of a lease that authorizes the holder of that interest to enter upon the leased lands to conduct drilling and related operations, including production of oil and gas from such lands in accordance with the terms of the lease.

Operating rights owner. A person holding operating rights in a lease issued by the United States. A leasee also may be an operating rights owner if the operating rights in a lease or portion thereof have not been conveyed to another person.

Operations. Surface disturbing activities that are conducted on a leasehold on National Forest System lands pursuant to a current approved surface use plan of operations, including but not limited to, exploration, development, and production of oil and gas resources and reclamation of surface resources.

Operator. Any person or entity, including, but not limited to, the lessee or operating rights owner, who has stated in writing to the authorized Forest officer that they are responsible under the terms and conditions of the lease for the operations conducted on the leased lands or a portion thereof.

Person. An individual, partnership, corporation, association or other legal entity.

Substantial modification. A change in lease terms or a modification, waiver, or exception of a lease stipulation that would require an environmental assessment or environmental impact statement be prepared pursuant to the National Environmental Policy Act of 1969.

Surface use plan of operations. A plan for surface use, disturbance, and reclamation.

Transfer. Any conveyance of an interest in a lease by assignment, sublease or otherwise. This definition includes the terms: *Assignment* which means a conveyance of all or a portion of the lessee's record title interest in a lease; and *sublease* which means a conveyance of a non-record interest in a lease, i.e., a conveyance of operating rights is normally a sublease and a sublease also is a subsidiary arrangement between the lessee (sublessor) and the sublessee, but a sublease does not include a transfer of a purely financial interest, such as overriding royalty interest or payment out of production, nor does it affect the relationship imposed by a lease between the lessee(s) and the United States.

Transferee. A person to whom an interest in a lease issued by the United States has been transferred.

LEASING

§ 228.102 Leasing analyses and decisions.

(a) *Compliance with the National Environmental Policy Act of 1969.* In analyzing lands for leasing, the authorized Forest officer shall comply with the National Environmental Policy Act of 1969, implementing regulations at 43 CFR parts 1500–1508, and Forest Service implementing policies and procedures set forth in Forest Service Manual chapter 1950 and Forest Service Handbook 1909.15.

(b) *Scheduling analysis of available lands.* Within 6 months of April 20, 1990, Forest Supervisors shall develop, in cooperation with the Bureau of Land Management and with public input, a schedule for analyzing lands under their jurisdiction that have not been already analyzed for leasing. The Forest Supervisors shall revise or make additions to the schedule at least annually. In scheduling lands for analysis, the authorized Forest officer shall identify and exclude from further review the following lands which are legally unavailable for leasing:

(1) Lands withdrawn from mineral leasing by an act of Congress or by an order of the Secretary of the Interior;

(2) Lands recommended for wilderness allocation by the Secretary of Agriculture;

(3) Lands designated by statute as wilderness study areas, unless oil and gas leasing is specifically allowed by the statute designating the study area;

(4) Lands within areas allocated for wilderness or further planning in Executive Communication 1504, Ninety-Sixth Congress (House Document No. 96-119), unless such lands subsequently have been allocated to uses other than wilderness by an approved Forest land and resource management plan or have been released to uses other than wilderness by an act of Congress; and,

(5) Roadless areas currently undergoing evaluation pursuant to 36 CFR 219.17.

(c) *Leasing analyses.* The leasing analysis shall be conducted by the authorized Forest officer in accordance with the requirements of 36 CFR part 219 (Forest land and resource management planning) and/or, as appropriate, through preparation of NEPA documents. As part of the analysis, the authorized Forest oficer shall:

(1) Identify on maps those areas that will be:

(i) Open to development subject to the terms and conditions of the standard oil and gas lease form (including an explanation of the typical standards and objectives to be enforced under the standard lease terms);

(ii) Open to development but subject to constraints that will require the use of lease stipulations such as those prohibiting surface use on areas larger than 40 acres or such other standards as may be developed in the plan for stipulation use (with discussion as to why the constraints are necessary and justifiable); and

(iii) Closed to leasing, distinguishing between those areas that are being closed through exercise of management direction, and those closed by law, regulation, etc.

(2) Identify alternatives to the areas listed in paragraph (c)(1) of this section, including that of not allowing leasing.

(3) Project the type/amount of post-leasing activity that is reasonably foreseeable as a consequence of conducting a leasing program consistent with that described in the proposal and for each alternative.

(4) Analyze the reasonable foreseeable impacts of post-leasing activity projected under paragraph (c)(3) of this section.

(d) *Area or Forest-wide leasing decisions (lands administratively available for leasing).* Upon completion of the leasing analysis, the Regional Forest shall promptly notify the Bureau of Land Management as to the area or Forest-wide leasing decisions that have been made, that is, identify lands which have been found administratively available for leasing.

(e) *Leasing decisions for specific lands.* At such time as specific lands are being considered for leasing, the Regional Forester shall review the area or Forest-wide leasing decision and shall authorize the Bureau of Land Management to offer specific lands for lease subject to:

(1) Verifying that oil and gas leasing of the specific lands has been adequately addressed in a NEPA document, and is consistent with the Forest land and resource management plan. If NEPA has not been adequately addressed, or if there is significant new information or circumstances as defined by 40 CFR 1502.9 requiring further environmental analysis, additional environment analysis shall be done before a leasing decision for specific lands will be made. If there is inconsistency with the Forest land and resource management plan, no authorization for leasing shall be given unless the plan is amended or revised.

(2) Ensuring that conditions of surface occupancy identified in § 228.102(c)(1) are properly included as stipulations in resulting leases.

(3) Determining that operations and development could be allowed somewhere on each proposed lease, except where stipulations will prohibit all surface occupancy.

§ 228.103 Notice of appeals of decisions.

The authorized Forest officer shall promptly notify the Bureau of Land Management if appeals of either an area or Forest-wide leasing decision or a leasing decision for specific lands are filed during the periods provided for under 36 CFR part 217.

§ 228.104 Consideration of requests to modify, waive, or grant exceptions to lease stipulations.

(a) *General.* An operator submitting a surface use plan of operations may request the authorized Forest officer to authorize the Bureau of Land Management to modify (permanently change), waive (permanently remove), or grant an exception (case-by-case exemption) to a stipulation included in a lease at the direction of the Forest Service. The person making the request is encouraged to submit any information which might assist the authorized Forest officer in making a decision.

(b) *Review.* The authorized Forest officer shall review any information submitted in support of the request and any other pertinent information.

(1) As part of the review, consistent with 30 U.S.C. 226 (f)-(g), the authorized Forest officer shall ensure compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4331 *et seq.*) and any other applicable laws, and shall ensure preparation of any appropriate environmental documents.

(2) The authorized Forest officer may authorize the Bureau of Land Management to modify, waive, or grant an exception to a stipulation if:

(i) The action would be consistent with applicable Federal laws;

(ii) The action would be consistent with the current forest land and resource management plan;

(iii) The management objectives which led the Forest Service to require the inclusion of the stipulation in the lease can be met without restricting operations in the manner provided for by the stipulation given the change in the present condition of the surface resources involved, or given the nature, location, timing, or design of the proposed operations; and

(iv) The action is acceptable to the authorized Forest officer based upon a review of the environmental consequences.

(c) *Other agency stipulations.* If a stipulation was included in a lease by the Forest Service at the request of another agency, the authorized Forest officer shall consult with that agency prior to authorizing modification, waiver, or exception.

(d) *Notice of decision.* (1) When the review of a stipulation modification, waiver, or exception request has been completed and the authorized Forest officer has reached a decision, the authorized Forest officer shall promptly notify the operator and the appropriate Bureau of Land Management office, in writing, of the decision to grant, or grant with additional conditions, or deny the request.

(2) Any decision to modify, waive, or grant an exception to a lease stipulation shall be subject to administrative appeal only in conjunction with an appeal of a decision on a surface use plan of operation or supplemental surface use plan of operation.

AUTHORIZATION OF OCCUPANCY WITHIN A LEASEHOLD

§ 228.105 Issuance of onshore orders and notices to lessees.

(a) *Onshore oil and gas orders.* The Chief of the Forest Service may issue, or cosign with the Director, Bureau of Land Management, Onshore Oil and Gas Orders necessary to implement and supplement the regulations of this subpart.

(1) *Adoption of Onshore Oil and Gas Order No. 1.* Until such time as another order is adopted and codified in the CFR, operators shall submit surface use plans of operations in accordance with Section III.G.4(b), Guidelines for preparing surface use program, of the Department of the Interior, Bureau of Land Management, Onshore Oil and Gas Order No. 1, 48 FR 48915-30 (Oct. 21, 1983), published as Appendix A to this subpart.

(2) *Adoption of additional onshore oil and gas orders.* Additional onshore oil and gas orders shall be published in the FEDERAL REGISTER for public comment and codified in the CFR.

(3) *Applicability of onshore oil and gas orders.* Onshore Oil and Gas Orders issued pursuant to this section are binding on all operations conducted on National Forest System lands, unless otherwise provided therein.

(b) *Notices to lessees, transferees, and operators.* The authorized Forest officer may issue, or cosign with the authorized officer of the Bureau of Land Management, Notices to Lessees, Transferees, and Operators necessary to implement the regulations of this subpart. Notices to Lessees, Transferees, and Operators are binding on all operations conducted on the administrative unit of the National Forest System (36 CFR 200.2) supervised by the authorized Forest officer who issued or cosigned such notice.

§ 228.106 Operator's submission of surface use plan of operations.

(a) *General.* No permit to drill on a Federal oil and gas lease for National Forest System lands may be granted without the analysis and approval of a surface use plan of operations covering proposed surface disturbing activities. An operator must obtain an approved surface use plan of operations before conducting operations that will cause surface disturbance. The operator shall submit a proposed surface use plan of operations as part of an Application for a Permit to Drill to the appropriate Bureau of Land Management office for forwarding to the Forest Service, unless otherwise directed by the Onshore Oil and Gas Order in effect when the proposed plan of operations is submitted.

(b) *Preparation of plan.* In preparing a surface use plan of operations, the operator is encouraged to contact the local Forest Service office to make use of such information as is available from the Forest Service concerning surface resources and uses, environmental considerations, and local reclamation procedures.

(c) *Content of plan.* The type, size, and intensity of the proposed operations and the sensitivity of the surface resources that will be affected by the proposed operations determine the level of detail and the amount of information which the operator includes in a proposed plan of operations. However, any surface use plan of operations submitted by an operator shall contain the information specified by the Onshore Oil and Gas Order in effect when the surface use plan of operations is submitted.

(d) *Supplemental plan.* An operator must obtain an approved supplemental surface use plan of operations before conducting any surface disturbing operations that are not authorized by a current approved surface use plan of operations. The operator shall submit a proposed supplemental surface use plan of operations to the appropriate Bureau of Land Management office for forwarding to the Forest Service, unless otherwise directed by the Onshore Oil and Gas Order in effect when the proposed supplemental plan of operations is submitted. The supplemental plan of operations need only address those operations that differ from the operations authorized by the current approved surface use plan of operations. A supplemental plan is otherwise subject to the same requirements under this subpart as an initial surface use plan of operations.

§ 228.107 Review of surface use plan of operations.

(a) *Review.* The authorized Forest officer shall review a surface use plan of operations as promptly as practicable given the nature and scope of the proposed plan. As part of the review, the authorized Forest officer shall comply with the National Environmental Policy Act of 1969, implementing regulations at 40 CFR Parts 1500-1508, and the Forest Service implementing policies and procedures set forth in Forest Service Manual Chapter 1950 and Forest Service Handbook 1909.15 and shall ensure that:

(1) The surface use plan of operations is consistent with the lease, including the lease stipulations, and applicable Federal laws;

(2) To the extent consistent with the rights conveyed by the lease, the surface use plan of operations is consistent with, or is modified to be consistent with, the applicable current approved forest land and resource management plan;

(3) The surface use plan of operations meets or exceeds the surface use requirements of § 228.108 of this subpart; and

(4) The surface use plan of operations is acceptable, or is modified to be acceptable, to the authorized Forest officer based upon a review of the environmental consequences of the operations.

(b) *Decision.* The authorized Forest officer shall make a decision on the approval of a surface use plan of operations as follows:

(1) If the authorized Forest officer will not be able to make a decision on the proposed plan within 3 working days after the conclusion of the 30-day notice period provided for by 30 U.S.C. 226(f), the authorized Forest officer shall advise the appropriate Bureau of Land Managemnt office and the operator as soon as such delay becomes apparent, either in writing or orally with subsequent written confirmation, that additional time will be needed to process the plan. The authorized Forest officer shall explain the reason why additional time is needed and project the date by which a decision on the plan will likely be made.

(2) When the review of a surface use plan of operations has been completed, the authorized Forest officer shall promptly notify the operator and the appropriate Bureau of Land Management office, in writting, that:

(i) The plan is approved as submitted:

(ii) The plan is approved subject to specified conditions; or,

(iii) The plan is disapproved for the reasons stated.

(c) *Notice of decision.* The authorized Forest officer shall give public notice of the decision on a pan and include in the notice that the decision is subject to appeal under the administrative appeal procedures at 36 CFR parts 217 and 251, subpart C.

(d) *Transmittal of decision.* The authorized Forest officer shall immediately forward a decision on a surface use plan of operations to the appropriate Bureau of Land Management office and the operator. This transmittal shall include the estimated cost of reclamation and restoration (§ 228.109(a)) if the authorized Forest officer believes that additional bonding is required.

(e) *Supplemental plans.* A supplemental surface use plan of operations (§ 228.106(d)) shall be reviewed in the same manner as an initial surface use plan of operations.

§ 228.108 Surface use requirements.

(a) *General.* The operator shall conduct operations on a leasehold on National Forest System lands in a manner that minimizes effects on surface resources, prevents unnecessary or unreasonable surface resource disturbance, and that is in compliance with the other requirements of this section.

(b) *Notice of operations.* The operator must notify the authorized Forest officer 48 hours prior to commencing operations or resuming operations following their temporary cessation (§ 228.111).

(c) *Access facilities.* The operator shall construct and maintain access facilities to assure adequate drainage and to minimize or prevent damage to surface resources.

(d) *Cultural and historical resources.* The operator shall report findings of cultural and historical resources to the authorized Forest officer immediately and, except as otherwise authorized in an approved surface use plan of operations, protect such resources.

(e) *Fire prevention and control.* To the extent practicable, the operator shall take measures to prevent uncontrolled fires on the area of operation and to suppress uncontrolled fires resulting from the operations.

(f) *Fisheries, wildlife and plant habitat.* The operator shall comply with the requirements of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR chapter IV), and, except as otherwise provided in an approved surface use plan of operations, conduct operations in such a manner as to maintain and protect fisheries, wildlife, and plant habitat.

(g) *Reclamation.* (1) Unless otherwise provided in an approved surface use plan of operations, the operator shall conduct reclamation concurrently with other operations.

(2) Within 1 year of completion of operations on a portion of the area of operation, the operator must reclaim that portion, unless a different period of time is approved in writing by the authorized Forest officer.

(3) The operator must:

(i) Control soil erosion and landslides;

(ii) Control water runoff;

(iii) Remove, or control, solid wastes, toxic substances, and hazardous substances;

(iv) Reshape and revegetate disturbed areas;

(v) Remove structures, improvements, facilities and equipment, unless otherwise authorized; and

(vi) Take such other reclamation measures as specified in the approved surface use plan of operations.

(h) *Safety measures.* (1) The operator must maintain structures, facilities, improvements, and equipment located on the area of operation in a safe and neat manner and in accordance with an approved surface use plan of operations.

(2) The operator must take appropriate measures in accordance with applicable Federal and State laws and regulations to protect the public from haz-

ardous sites or conditions resulting from the operations. Such measures may include, but are not limited to, posting signs, building fences, or otherwise identifyng the hazardous site or condition.

(i) *Wastes.* The operator must either remove garbage, refuse, and sewage from National Forest System lands or treat and dispose of that material in such a manner as to minimize or prevent adverse impacts on surface resources. The operator shall treat or dispose of produced water, drilling fluid, and other waste generated by the operations in such a manner as to minimize or prevent adverse impacts on surface resources.

(j) *Watershed protection.* (1) Except as otherwise provided in the approved surface use plan of operations, the operator shall not conduct operations in areas subject to mass soil movement, riparian areas and wetlands.

(2) The operator shall take measures to minimize or prevent erosion and sediment production. Such measures include, but are not limited to, siting structures, facilities, and other improvements to avoid steep slopes and excessive clearing of land.

§ 228.109 Bonds.

(a) *General.* As part of the review of a proposed surface use plan of operations, the authorized Forest officer shall consider the estimated cost to the Forest Service to reclaim those areas that would be disturbed by operations and to restore any lands or surface waters adversely affected by the lease operations after the abandonment or cessation of operations on the lease. If at any time prior to or during the conduct of operations, the authorized Forest officer determines the financial instrument held by the Bureau of Land Management is not adequate to ensure complete and timely reclamation and restoration, the authorized Forest officer shall give the operator the option of either increasing the financial instrument held by the Bureau of Land Management or filing a separate instrument with the Forest Service in the amount deemed adequate by the authorized Forest officer to ensure reclamation and restoration.

(b) *Standards for estimating reclamation costs.* The authorized Forest officer shall consider the costs of the operator's proposed reclamation program and the need for additional measures to be taken when estimating the cost to the Forest Service to reclaim the disturbed area.

(c) *Release of reclamation liability.* An operator may request the authorized Forest officer to notify the Bureau of Land Management of reduced reclamation liability at any time after reclamation has commenced. The authorized Forest officer shall, if appropriate, notify the Bureau of Land Management as to the amount to which the liability has been reduced.

§ 228.110 Indemnification.

The operator and, if the operator does not hold all of the interest in the applicable lease, all lessees and transferees are jointly and severally liable in accordance with Federal and State laws for indemnifying the United States for:

(a) Injury, loss or damage, including fire suppression costs, which the United States incurs as a result of the operations; and

(b) Payments made by the United States in satisfaction of claims, demands or judgments for an injury, loss or damage, including fire suppression costs, which result from the operations.

ADMINISTRATION OF OPERATIONS

§ 228.111 Temporary cessation of operations.

(a) *General.* As soon as it becomes apparent that there will be a temporary cessation of operations for a period of 45 days or more, the operator must verbally notify and subsequently file a statement with the authorized Forest officer verifying the operator's intent to maintain structures, facilities, improvements, and equipment that will remain on the area of operation during the cessation of operations, and specifying the expected date by which operations will be resumed.

(b) *Seasonal shutdowns.* The operator need not file the statement required by paragraph (a) of this section if the cessation of operations results from seasonally adverse weather conditions and the operator will resume operations promptly upon the conclusion of those adverse weather conditions.

(c) *Interim measures.* The authorized Forest officer may require the operator to take reasonable interim reclamation or erosion control measures to protect surface resources during temporary cessations of operations, including during cessations of operations resulting from seasonally adverse weather conditions.

§ 228.112 Compliance and inspection.

(a) *General.* Operations must be conducted in accordance with the lease, including stipulations made part of the lease at the direction of the Forest Service, an approved surface use plan of operations, the applicable Onshore Oil and Gas Order (§ 228.105(a)), an applicable Notice to lessees, transferees, and operators (§ 228.105(b)), and regulations of this subpart.

(b) *Completion of reclamation.* The authorized Forest officer shall give prompt written notice to an operator whenever reclamation of a portion of the area affected by surface operations has been satisfactorily completed in accordance with the approved surface use plan of operations and § 228.108 of this subpart. The notice shall describe the portion of the area on which the reclamation has been satisfactorily completed.

(c) *Compliance with other statutes and regulations.* Nothing in this subpart shall be construed to relieve an operator from complying with applicable Federal and State laws or regulations, including, but not limited to:

(1) Federal and State air quality standards, including the requirements of the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*);

(2) Federal and State water quality standards, including the requirements of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151 *et seq.*);

(3) Federal and State standards for the use or generation of solid wastes, toxic substances and hazardous substances, including the requirements of the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. 9601 *et seq.*, and its implementing regulations, 40 CFR chapter I, subchapter J, and the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*, and its implementing regulations, 40 CFR chapter I, subchaper I;

(4) The Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*, and its implementing regulations, 50 CFR chapter IV;

(5) The Archeological Resources Protection Act of 1979, as amended (16 U.S.C. 470aa *et seq.*) and its implementing regulations 36 CFR part 296;

(6) The Mineral Leasing Act of 1920, 30 U.S.C. 1981 et seq., the Mineral Leasing Act of Acquired Lands of 1947, 30 U.S.C. 351 *et seq.*, the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. 1701 *et seq.*, and their implementing regulations, 43 CFR chapter II, group 3100; and

(7) Applicable Onshore Oil and Gas Orders and Notices to Lessees and Operators (NTL's) issued by the United States Department of the Interior, Bureau of Land Management pursuant to 43 CFR chapter II, part 3160, subpart 3164.

(d) *Penalties.* If surface disturbing operations are being conducted that are not authorized by an approved surface use plan of operations or that violate a term or operating condition of an approved surface use plan of operations, the person conducting those operations is subject to the prohibitions and attendant penalties of 36 CFR part 261.

(e) *Inspection.* Forest Service officers shall periodically inspect the area of operations to determine and document whether operations are being conducted in compliance with the regulations in this subpart, the stipulations included in the lease at the direction of the Forest Service, the approved surface use plan of operations, the applicable Onshore Oil and Gas Order, and applicable Notices to Lessees, Transferees, and Operators.

§ 228.113 Notice of noncompliance.

(a) *Issuance.* When an authorized Forest officer finds that the operator is not in compliance with a reclamation or other standard, a stipulation included in a lease at the direction of the Forest Service, an approved surface use plan of operation, the regulations in this subpart, the applicable onshore oil and gas order, or an applicable notice to lessees, transferees, and operators, the authorized Forest officer shall issue a notice of noncompliance.

(1) *Content.* The notice of noncompliance shall include the following:

(i) Identification of the reclamation requirements or other standard(s) with which the operator is not in compliance;

(ii) Description of the measures which are required to correct the noncompliance;

(iii) Specification of a reasonable period of time within which the noncompliance must be corrected;

(iv) If the noncompliance appears to be material, identification of the possible consequences of continued noncompliance of the requirement(s) or standard(s) as described in 30 U.S.C. 226(g);

(v) If the noncompliance appears to be in violation of the prohibitions set forth in 36 CFR part 261, identification of the possible consequences of continued noncompliance of the requirement(s) or standard(s) as described in 36 CFR 261.1b; and

(vi) Notification that the authorized Forest officer remains willing and desirous of working cooperatively with the operator to resolve or remedy the noncompliance.

(2) *Extension of deadlines.* The operator may request an extension of a deadline specified in a notice of noncompliance if the operator is unable to come into compliance with the applicable requirement(s) or standard(s) identified in the notice of noncompliance by the deadline because of conditions beyond the operator's control. The authorized Forest officer shall not extend a deadline specified in a notice of noncompliance unless the operator requested an extension and the authorized Forest officer finds that there was a condition beyond the operator's control, that such condition prevented the operator from complying with the notice of noncompliance by the specified deadline, and that the extension will not adversely affect the interests of the United States. Conditions which may be beyond the operator's control include, but are not limited to, closure of an area in accordance with 36 CFR part 261, subparts B or C, or inaccessibility of an area of operations due to such conditions as fire, flooding, or snowpack.

(3) *Manner of service.* The authorized Forest officer shall serve a notice of noncompliance or a decision on a request for extension of a deadline specified in a notice upon the operator in person, by certified mail or by telephone. However, if notice is initially provided in person or by telephone, the authorized Forest officer shall send the operator written confirmation of the notice or decision by certified mail.

(b) *Failure to come into compliance.* If the operator fails to come into compliance with the applicable requirement(s) or standard(s) identified in a notice of noncompliance by the deadline specified in the notice, or an approved extension, the authorized Forest officer shall decide whether: The noncompliance appears to be material given the reclamation requirements and other standards applicable to the lease established by 30 U.S.C. 226(g), the regulations in this subpart, the stipulations included in a lease at the direction of the Forest Service, an approved surface use plan of operations, the applicable Onshore Oil and Gas Order, or an applicable Notice to lessees, transferees, and operators; the noncompliance is likely to result in danger to public health or safety or irreparable resource damage; and the noncompliance is resulting in an emergency.

(1) *Referral to compliance officer.* When the operations appear to be in material noncompliance, the authorized Forest officer shall promptly refer the matter to the compliance officer. The referral shall be accompanied by a complete statement of the facts supported by appropriate exhibits. Apparent material noncompliance includes, but is not limited to, operating without an approved surface use plan of operations, conducting operations that have been suspended, fail-

ure to timely complete reclamation in accordance with an approved surface use plan of operations, failure to maintain an additional bond in the amount required by the authorized Forest officer during the period of operation, failure to timely reimburse the Forest Service for the cost of abating an emergency, and failing to comply with any term included in a lease, stipulation, or approved surface use plan of operations, the applicable onshore oil and gas order, or an applicable Notice to lessees, transferees, and operators, relating to the protection of a threatened or endangered species.

(2) *Suspension of operations.* When the noncompliance is likely to result in danger to public health or safety or in irreparable resource damage, the authorized Forest officer shall suspend the operations, in whole or in part.

(i) A suspension of operations shall remain in effect until the authorized Forest officer determines that the operations are in compliance with the applicable requirement(s) or standard(s) identified in the notice of noncompliance.

(ii) The authorized Forest officer shall serve decisions suspending operations upon the operator in person, by certified mail, or by telephone. If notice is initially provided in person or by telephone, the authorized Forest officer shall send the operator written confirmation of the decision by certified mail.

(iii) The authorized Forest officer shall immediately notify the appropriate Bureau of Land Management office when an operator has been given notice to suspend operations.

(3) *Abatement of emergencies.* When the noncompliance is resulting in an emergency, the authorized Forest officer may take action as necessary to abate the emergency. The total cost to the Forest Service of taking actions to abate an emergency becomes an obligation of the operator.

(i) Emergency situations include, but are not limited to, imminent dangers to public health or safety or irreparable resource damage.

(ii) The authorized Forest officer shall promptly serve a bill for such costs upon the operator by certified mail.

§ 228.114 Material noncompliance proceedings.

(a) *Evaluation of referral.* The compliance officer shall promptly evaluate a referral made by the authorized Forest officer pursuant to § 228.113(b)(1) of this subpart.

(b) *Dismissal of referral.* The compliance officer shall dismiss the referral if the compliance officer determines that there is not adequate evidence to support a reasonable belief that:

(1) The operator was not in compliance with the applicable requirement(s) or standard(s) identified in a notice of noncompliance by the deadline specified in the notice, or an extension approved by the authorized Forest officer; or

(2) The noncompliance with the applicable requirement(s) or standard(s) identified in the notice of noncompliance may be material.

(c) *Initiation of proceedings.* The compliance officer shall initiate a material noncompliance proceeding if the compliance officer agrees that there is adequate evidence to support a reasonable belief that an operator has failed to come into compliance with the applicable requirement(s) or standard(s) identified in a notice of noncompliance by the deadline specified in the notice, or extension approved by the authorized Forest officer, and that the noncompliance may be material.

(1) *Notice of proceedings.* The compliance officer shall inform the lessee and operator of the material noncompliance proceedings by certified mail, return receipt requested.

(2) *Content of notice.* The notice of the material noncompliance proceeding shall include the following:

(i) The specific reclamation requirement(s) or other standard(s) of which the operator may be in material noncompliance;

(ii) A description of the measures that are required to correct the violation;

(iii) A statement that if the compliance officer finds that the operator is in material noncompliance with a reclamation requirement or other standard applicable to the lease, the Secretary of the Interior will not be able to issue new leases or approve new transfers of leases to the operator, any subsidiary or affiliate of the operator, or any person controlled by or under common control with the operator until the compliance officer finds that the operator has come into compliance with such requirement or standard; and

(iv) A recitation of the specific procedures governing the material noncompliance proceeding set forth in paragraphs (d) through (g) of this section.

(d) *Answer.* Within 30 calendar days after receiving the notice of the proceeding, the operator may submit, in person, in writing, or through a representative, an answer containing information and argument in opposition to the proposed material noncompliance finding, including information that raises a genuine dispute over the material facts. In that submission, the operator also may:

(1) Request an informal hearing with the compliance officer; and

(2) Identify pending administrative or judicial appeal(s) which are relevant to the proposed material noncompliance finding and provide information which shows the relevance of such appeal(s).

(e) *Informal hearing.* If the operator requests an informal hearing, it shall be held within 20 calendar days from the date that the compliance officer receives the operator's request.

(1) The compliance officer may postpone the date of the informal hearing if the operator requests a postponement in writing.

(2) At the hearing, the operator, appearing personally or through an attorney or another authorized representative, may informally present and explain evidence and argument in opposition to the proposed material noncompliance finding.

(3) A transcript of the informal hearing shall not be required.

(f) *Additional procedures as to disputed facts.* If the compliance officer finds that the answer raises a genuine dispute over facts essential to the proposed material noncompliance finding, the compliance officer shall so inform the operator by certified mail, return receipt requested. Within 10 days of receiving this notice, the operator may request a fact-finding conference on those disputed facts.

(1) The fact-finding conference shall be scheduled within 20 calendar days from the date the compliance officer receives the operator's request, unless the operator and compliance officer agree otherwise.

(2) At the fact-finding conference, the operator shall have the opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront the person(s) the Forest Service presents.

(3) A transcribed record of the fact-finding conference shall be made, unless the operator and the compliance officer by mutual agreement waive the requirement for a transcript. The transcript will be made available to the operator at cost upon request.

(4) The compliance officer may preside over the fact-finding conference or designate another authorized Forest officer to preside over the fact-finding conference.

(5) Following the fact-finding conference, the authorized Forest officer who presided over the conference shall promptly prepare written findings of fact based upon the preponderance of the evidence. The compliance officer may reject findings of fact prepared by another authorized Forest officer, in whole or in part, if the compliance officer specifically determines that such findings are arbitrary and capricious or clearly erroneous.

(g) *Dismissal of proceedings.* The compliance officer shall dismiss the material noncompliance proceeding if, before the compliance officer renders a decision pursuant to paragraph (h) of this section, the authorized Forest officer who made the referral finds that the operator has come into compliance with the applicable requirements or standards identified in the notice of proceeding.

(h) *Compliance officer's decision.* The compliance officer shall base the decision on the entire record, which shall consist of the authorized Forest officer's referral and its accompanying statement of facts and exhibits, information and argument that the operator provided in an answer, any information and argument that the operator provided in an informal hearing if one was held, and the findings of fact if a fact-finding conference was held.

(1) *Content.* The compliance officer's decision shall state whether the operator has violated the requirement(s) or standard(s) identified in the notice of proceeding and, if so, whether that noncompliance is material given the requirements of 30 U.S.C. 226(g), the stipulations included in the lease at the direction of the Forest Service, the regulations in this subpart or an approved surface use plan of operations, the applicable onshore oil and gas order, or an applicable notice to lessees, transferees, and operators. If the compliance officer finds that the operator is in material noncompliance, the decision also shall:

(i) Describe the measures that are required to correct the violation;

(ii) Apprise the operator that the Secretary of the Interior is being notified that the operator has been found to be in material noncompliance with a reclamation requirement or other standard applicable to the lease; and

(iii) State that the decision is the final administrative determination of the Department of Agriculture.

(2) *Service.* The compliance officer shall serve the decision upon the operator by certified mail, return receipt requested. If the operator is found to be in material noncompliance, the compliance officer also shall immediately send a copy of the decision to the appropriate Bureau of Land Management office and to the Secretary of the Interior.

(i) *Petition for withdrawal of finding.* If an operator who has been found to be in material noncompliance under the provisions of this section believes that the operations have subsequently come into compliance with the applicable requirement(s) or standard(s) identified in the compliance officer's decision, the operator may submit a written petition requesting that the material noncompliance finding be withdrawn. The petition shall be submitted to the authorized Forest officer who issued the operator the notice of noncompliance under § 228.113(a) of this subpart and shall include information or exhibits which shows that the operator has come into compliance with the requirement(s) or standard(s) identified in the compliance officer's decision.

(1) *Response to petition.* Within 30 calendar days after receiving the operator's petition for withdrawal, the authorized Forest officer shall submit a written statement to the compliance officer as to whether the authorized Forest officer agrees that the operator has come into compliance with the requirement(s) or standard(s) identified in the compliance officer's decision. If the authorized Forest officer disagrees with the operator, the written statement shall be accompanied by a complete statement of the facts supported by appropriate exhibits.

(2) *Additional procedures as to disputed material facts.* If the compliance officer finds that the authorized Forest officer's response raises a genuine dispute over facts material to the decision as to whether the operator has come into compliance with the requirement(s) or standard(s) identified in the compliance officer's decision, the compliance officer shall so notify the operator and authorized Forest officer by certified mail, return receipt requested. The notice shall also advise the operator that the fact finding procedures specified in paragraph (f) of this section apply to the compliance officer's decision on the petition for withdrawal.

(3) *Compliance officer's decision.* The compliance officer shall base the decision on the petition on the entire record, which shall consist of the operator's petition for withdrawal and its accompanying exhibits, the authorized Forest officer's response to the petition and, if applicable, its accompanying statement of facts and exhibits, and if a fact-finding conference was held, the findings of fact. The compliance officer shall serve the decision on the operator by certified mail.

(i) If the compliance officer finds that the operator remains in violation of requirement(s) or standard(s) identified in the decision finding that the operator was in material noncompliance, the decision on the petition for withdrawal shall identify such requirement(s) or standard(s) and describe the measures that are required to correct the violation(s).

(ii) If the compliance officer finds that the operator has subsequently come into compliance with the requirement(s) or standard(s) identified in the compliance officer's decision finding that the operator was in material noncompliance, the compliance officer also shall immediately send a copy of the decision on the petition for withdrawal to the appropriate Bureau of Land Management office and notify the Secretary of the Interior that the operator has come into compliance.

(j) *List of operators found to be in material noncompliance.* The Deputy Chief, National Forest System, shall compile and maintain a list of operators who have been found to be in material noncompliance with reclamation requirements and other standards as provided in 30 U.S.C. 226(g), the regulations in this subpart, a stipulation included in a lease at the direction of the Forest Service, or an approved surface use plan of operations, the applicable onshore oil and gas order, or an applicable notice to lessees, transferees, and operators, for a lease on National Forest System lands to which such standards apply. This list shall be made available to Regional Foresters, Forest Supervisors, and upon request, members of the public.

§ 228.115 Additional notice of decisions.

(a) The authorized Forest officer shall promptly post notices provided by the Bureau of Land Management of:

(1) Competitive lease sales which the Bureau plans to conduct that include National Forest System lands;

(2) Substantial modifications in the terms of a lease which the Bureau proposes to make for leases on National Forest System lands; and

(3) Applications for permits to drill which the Bureau has received for leaseholds located on National Forest System lands.

(b) The notice shall be posted at the offices of the affected Forest Supervisor and District Ranger in a prominent location readily accessible to the public.

(c) The authorized Forest officer shall keep a record of the date(s) the notice was posted in the offices of the affected Forest Supervisor and District Ranger.

(d) The posting of notices required by this section are in addition to the requirements for public notice of decisions provided in § 228.104(d) (Notice of decision) and § 228.107(c) (Notice of decision) of this subpart.

§ 228.116 Information collection requirements.

(a) *Sections containing information requirements.* The following sections of this subpart contain information requirements as defined in 5 CFR part 1320 and have been approved for use by the Office of Management and Budget:

(1) Section 228.104(a) Requests to Modify, Waive, or Grant Exceptions to Leasing Stipulations;

(2) Section 228.106 (a), (c), and (d) Submission of Surface Use Plan of Operations;

(3) Section 228.109(c) Request for Reduction in Reclamation Liability after Reclamation;

(4) Section 228.111(a) Notice of Temporary Cessation of Operations;

(5) Section 228.113(a)(2) Extension of Deadline in Notice of Noncompliance; and

(6) Section 228.114 (c) through (i) Material Noncompliance Proceedings.

(b) *OMB control number.* The information requirements listed in paragraph (a) of this section have been assigned OMB Control No. 0596-0101.

(c) *Average estimated burden hours.* (1) The average burden hours per response are estimated to be:

(i) 5 minutes for the information requirements in § 228.104(a) of this subpart;

(ii) No additional burden hours required to meet the information requirements in § 228.106 (a), (c), and (d) of this subpart;

(iii) 10 minutes for the information requirements in § 228.109(c) of this subpart;

(iv) 10 minutes for the information requirements in § 228.111(a) of this subpart;

(v) 5 minutes for the information requirements in § 228.113(a)(2) of this subpart; and

(vi) 2 hours for the information requirements in § 228.114 (c) through (i) of this subpart.

(2) Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief (2800), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

APPENDIX A TO SUBPART E—GUIDELINES FOR PREPARING SURFACE USE PLANS OF OPERATION FOR DRILLING

I. Components of a Complete Application for Permit to Drill

(a) Guidelines for Preparing Surface Use Program. In preparing this program, the lessee or operator shall submit maps, plats, and narrative descriptions which adhere closely to the following (maps and plats should be of a scale no smaller than 1:24,000 unless otherwise stated below):

(1) *Existing Roads.* A legible map (USGS topographic, county road, Alaska Borough, or other such map), labeled and showing the access route to the location, shall be used for locating the proposed well site in relation to a town (village) or other locatable point, such as a highway or county road, which handles the majority of the through traffic to the general area. The proposed route to the location, including appropriate distances from the point where the access route exits established roads, shall be shown. All access roads shall be appropriately labeled. Any plans for improvement and/or a statement that existing roads will be maintained in the same or better condition shall be provided. Existing roads and newly constructed roads on surface under the jurisdiction of a Surface Management Agency shall be maintained in accordance with the standards of the Surface Management Agency.

Information required by items (2), (3), (4), (5), (6), and (8) of this subsection also may be shown on this map if appropriately labeled or on a separate plat or map.

(2) *Access Roads to Be Constructed and Reconstructed.* All permanent and temporary access roads that are to be constructed, or reconstructed, in connection with the drilling of the proposed well shall be appropriately identified and submitted on a map or plat. Width, maximum grade, major cuts and fills, turnouts, drainage design, location and size of culverts and/or bridges, fence cuts and/or cattleguards, and type of surfacing material, if any, shall be stated for all construction. In addition, where permafrost exists, the methods for protection from thawing must be indicated. Modification of proposed road design may be required during the onsite inspection.

Information also should be furnished to indicate where existing facilities may be altered or modified. Such facilities include gates, cattleguards, culverts, and bridges which, if installed or replaced, shall be designed to adequately carry anticipated loads.

(3) *Location of Existing Wells.* It is recommended that this information be submitted on a map or plat and include all wells (water, injection or disposal, producing, and drilling) within a 1-mile radius of the proposed location.

(4) *Location of Existing and/or Proposed Facilities if Well is Productive.*

(i) On well pad—A map or plat shall be included showing, to the extent known or anticipated, the location of all production facilities and lines to be installed if the well is successfully completed for production.

(ii) Off well pad—A map or plat shall be included showing to the extent known or anticipated, the existing or new production facilities to be utilized and the lines to be installed if the well is successfully completed for production. If new construction, the dimensions of the facility layout are to be shown.

If the information required under (a) or (b) above is not known and cannot be accurately presented and the well subsequently is completed for production, the operator shall then comply with section IV of this Order.

(5) *Location and Type of Water Supply (Rivers, Creeks, Springs, Lakes, Ponds, and Wells).* This information may be shown by quarter-quarter section on a map or plat, or may be a written description. The source and transportation method for all water to be used in drilling the proposed well shall be noted if the source is located on Federal or Indian lands or if water is to be used from a Federal or Indian project. If the water is obtained from other than Federal or Indian lands, only the location need be identified. Any access roads crossing Federal or Indian lands that are needed to haul the water shall be described in items G.4.b. (1) and (2), as appropriate. If a water supply well is to be drilled on the lease, it shall be so stated under this item, and the authorized officer of the BLM may require the filing of a separate APD.

(6) *Construction Materials.* The lessee or operator shall state the character and intended use of all construction materials such as sand, gravel, stone and soil material. If the materials to be used are Federally-owned, the proposed source shall be shown

by either quarter-quarter section on a map or plat, or a written description. The use of materials under BLM jurisdiction is governed by 43 CFR 3610.2-3. The authorized officer shall inform the lessee or operator if the materials may be used free of charge or if an application for sale is required. If the materials to be used are Indian owned or under the jurisdiction of any Surface Management Agency other than BLM, the specific tribe and or Area Superintendent of BIA, or the appropriate Surface Management Agency office shall be contacted to determine the appropriate procedure for use of the materials.

(7) *Methods for Handling Waste Disposal.* A written description shall be given of the methods and locations proposed for safe containment and disposal of each type of waste material (e.g., cuttings, garbage, salts, chemicals, sewage, etc.) that results from the drilling of the proposed well. Likewise, the narrative shall include plans for the eventual disposal of drilling fluids and any produced oil or water recovered during testing operations.

(8) *Ancillary Facilities.* The plans, or subsequent amendments to such plans, shall identify all ancillary facilities such as camps and airstrips as to their location, land area required, and the methods and standards to be employed in their construction. Such facilities shall be shown on a map or plat. The approximate center of proposed camps and the center line of airstrips shall be staked on the ground.

(9) *Well Site Layout.* A plat of suitable scale (not less than 1 inch = 50 feet) showing the proposed drill pad and its location with respect to topographic features is required. Cross section diagrams of the drill pad showing any cuts and fills and the relation to topography are also required. The plat shall also include the approximate proposed location of the reserve and burn pits, access roads onto the pad, turnaround areas, parking area, living facilities, soil material stockpiles, and the orientation of the rig with respect to the pad and other facilities. Plans, if any to line the reserve pit should be detailed.

(10) *Plans for Reclamation of the Surface.* The program for surface reclamation upon completion of the operation, such as configuration of the reshaped topography, drainage system, segregation of spoil materials, surface manipulations, waste disposal, revegetation methods, and soil treatments, plus other practices necessary to reclaim all disturbed areas, including any access roads or portions of well pads when no longer needed, shall be stated. An estimate of the time for commencement and completion of reclamation operations, dependent on weather conditions and other local uses of the area, shall be provided.

(11) *Surface Ownership.* The surface ownership (Federal, Indian, State or private) at the well location, and for all lands crossed by roads which are to be constructed or upgraded, shall be indicated. Where the surface of the well site is privately owned, the operator shall provide the name, address, and telephone number of the surface owner, unless previously provided.

(12) *Other Information.* The lessee or operator is encouraged to submit any additional information that may be helpful in processing the application.

(13) *Lessee's or Operator's Representative and Certification.* The name, address, and telephone number of the lessee's or operator's field representative shall be included. The lessee or operator submitting the APD shall certify as follows:

I hereby certify that I, or persons under my direct supervision, have inspected the proposed drill site and access route; that I am familiar with the conditions which currently exist; that the statements made in this plan are, to the best of my knowledge, true and correct; and that the work associated with operations proposed herein will be performed by ________ and its contractors and subcontractors in conformity with this plan and the terms and conditions under which it is approved. This statement is subject to the provisions of 18 U.S.C. 1001 for the filing of a false statement.

Date ________________________

Name and Title ________________________

PART 241—WILDLIFE

Sec.

241.1 Cooperation in wildlife protection.
241.2 Cooperation in wildlife management.
241.3 Federal refuge regulations.

Authority: Sec. 1, 30 Stat. 35, sec. 1, 33 Stat 628, 39 Stat. 476 (16 U.S.C. 472, 551, 683).

Source: 6 FR 1987, Apr. 17, 1941, unless otherwise noted.

§ 241.1 Cooperation in wildlife protection.

(a) Officials of the Forest Service will cooperate with State, county, and Federal officials in the enforcement of all laws and regulations for the protection of wildlife.

(b) Officials of the Forest Service who have been, or hereafter may be, lawfully appointed deputy game wardens under the laws of any State, will serve in such capacity with full power to enforce the State laws and regulations relating to fur-bearing and game animals, birds, and fish. Such officials will serve as State deputy game wardens without additional pay, except that they may accept the usual fees allowed by the respective States for issuing hunting and fishing licenses. All officials of the Forest Service are prohibited from accepting bounties, rewards, or parts of fines offered by any person, corporation or State for aid rendered in the enforcement of any Federal or State law relating to furbearing and game animals, birds, and fish.

§ 241.2 Cooperation in wildlife management.

The Chief of the Forest Service, through the Regional Foresters and Forest Supervisors, shall determine the extent to which national forests or portions thereof may be devoted to wildlife protection in combination with other uses and services of the national forests, and, in cooperation with the Fish and Game Department or other constituted authority of the State concerned, he will formulate plans for securing and maintaining desirable populations of wildlife species, and he may enter into such general or specific cooperative agreements with appropriate State officials as are necessary and desirable for such purposes. Officials of the Forest Service will cooperate with State game officials in the planned and orderly removal in accordance with the requirements of State laws of the crop of game, fish, fur-bearers, and other wildlife on national forest lands.

§ 241.3 Federal refuge regulations.

Until a cooperative agreement has been entered into between the Chief of the Forest Service and appropriate State officials for the regulation of game as provided in § 241.2 and the necessary implementing laws or regulations have been promulgated and taken effect in order to carry out such cooperative agreement the following paragraphs shall be effective:

(a) Any person desiring to hunt or take game or non-game animals, game or non-game birds, or fish, upon any National Forest lands or waters embraced within the boundaries of a military reservation or a national game or bird refuge, preserve, sanctuary, or reservation established by or under authority of an act of Congress, shall procure in advance a permit from the Forest Supervisor. The permit shall be issued for a specified season, shall fix the bag or creel limits, and shall prescribe such other conditions as the Regional Forester may consider necessary for carrying out the purposes for which such lands have been set aside or reserved.

(b) Officials of the Forest Service will cooperate with persons, firms, corporations, and State and county officials in the protection, management, and utilization of game and non-game animals, game and non-game birds, and fish, upon national forest lands of the character referred to in paragraph (a) of this section. The Chief of the Forest Service may authorize the acceptance of contributions from cooperators for the payment of expenses incurred in carrying out the provisions of this section.

(c) When necessary for the protection of the forest or the conservation of animal life on refuges under paragraphs (a) and (b) of this section, the Chief of the Forest Service may sell, barter, exchange, or donate game and non-game animals. When the interests of game conservation will be promoted thereby, the Chief of the Forest Service may accept donations of game and non-game animals, game and non-game birds, and fish, or the eggs of birds and fish.

PART 242—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

Subpart A—General Provisions

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242.23 Subsistence hunting and trapping.
242.24 Subsistence fishing.
242.25 [Reserved].
242.26 Subsistence shellfish.

AUTHORITY: 16 U.S.C. 472, 551, 668dd *et seq.*, 3101 *et seq.*; 18 U.S.C. 7, 3559, 3571; 43 U.S.C. 1733.

SOURCE: 55 FR 27121, June 29, 1990, unless otherwise noted.

EFFECTIVE DATE NOTE: At 55 FR 27121, June 29, 1990, Part 242 was added, effective July 1, 1990, unless prior to that date, the State of Alaska extends its authority to continue with 16 U.S.C. 3115(d). Once effective, the rule will remain in effect until December 31, 1991, unless the State reestablishes its authority to comply with the 16 U.S.C. 3115(d) and a notice suspending these regulations is published in the Federal Register.

Subpart A—General Provisions

§ 242.1 Purpose.

The regulations in this part implement the Federal Subsistence Management Program on public lands within the State of Alaska.

§ 242.2 Authority.

These regulations are issued pursuant to the Secretary of the Interior and of Agriculture authority specified in Section 814 of the Alaska National Interest Lands Conservation Act (94 Stat. 2371, Pub. L. 96-487).

§ 242.3 Applicability and scope.

The regulations of this part 242 apply to subsistence taking and uses of fish and wildlife on all public lands in the State of Alaska, and do not supersede agency specific regulations. Subsistence uses in Glacier Bay National Park, Kenai Fjords National Park, Katmai National Park, and that portion of Denali National Park originally reserved as Mt. McKinley National Park are prohibited.

§ 242.4 Definitions.

The following definitions apply to all regulations contained in this part unless otherwise provided in other regulations of this part.

Agency means a subunit of a cabinet level Department such as U.S. Fish and Wildlife Service, USDA-Forest Service, Bureau of Indian Affairs, Bureau of Land Management, National Park Service, Department of Army, Department of Air Force, National Marine Fisheries Service, etc.

ANILCA means the Alaska National Interest Lands Conservation Act, Pub. L. 96-487, 94 Stat. 2371, as amended.

Barter means the exchange of fish or wildlife or their parts taken for subsistence uses: For other fish, wildlife or their parts; or, for other food or for nonedible items other than money, if the exchange is of a limited and noncommercial nature.

Board means the Federal Subsistence Board as described in § 242.10.

Council means the Regional Subsistence Advisory Councils as described in § 242.11.

Customary and traditional use means a consistent pattern of, and reliance for subsistence purposes upon fish or wildlife or other wild renewable resources near or reasonably accessible from the users' place of residence. Customary and traditional use determinations are community or geographic area based, except that outside established subsistence resident zones in certain National Parks, Park Monuments, or Park Preserves determinations may be specific to individuals.

Customary trade means types and volumes of trade in existence among rural resident subsistence users prior to the passage of ANILCA. Customary trade does not include significant commercial enterprises established after passage of ANILCA.

Family means all persons related by blood, marriage or adoption, or any person living within the household on a permanent basis.

Federal lands means lands the title to which is in the United States.

Fish and wildlife means any member of the animal kingdom, including without limitation any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or part thereof.

Household means that group of people domiciled in the same residence.

Local resident means a rural resident with subsistence use in a specific geographic area.

Person means an individual and does not include a corporation, company, partnership, firm, association, organization, business trust or society.

Public lands means lands situated in Alaska which are Federal lands, except—

(a) land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act and lands which have been confirmed to, validly selected by, or granted to the Territory of Alaska or State under any other provision of Federal law;

(b) land selections of a Native Corporation made under the Alaska Native Claims Settlement Act which have not been conveyed to a Native Corporation, unless any such selection is determined to be invalid or is relinquished; and

(c) lands referred to in section 19(b) of the Alaska Native Claims Settlement Act.

Regulatory year means July 1 through June 30.

Resident means any person who has their primary, permanent home within Alaska and whenever absent from this primary, permanent home, has the intention of returning to it. Factors demonstrating the location of a person's primary, permanent home may include, but are not limited to: the address listed on an Alaska license to drive, hunt, fish, or engage in an activity regulated by a government entity; affidavit of person or persons who know the individual; voter registration; location of residences owned, rented or leased; location of stored household goods; residence of spouse, minor children or dependents; tax documents; or whether the person claims residence in another location for any purpose. Individuals are not required to occupy a home twelve months per year to be considered resident.

Rural means any area of Alaska determined by the Board to qualify as such under the process described in § 242.15.

Secretary means the Secretary of the Interior, except that in reference to matters related to the National Forest System, such term means the Secretary of Agriculture.

State means the State of Alaska.

Subsistence uses means the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal family consumption; and for customary trade.

Take or taking as used with respect to fish and wildlife, means to pursue, hunt, shoot, trap, net, capture, collect, kill, harm, or attempt to engage in any such conduct.

§ 242.5 Federal subsistence policy, general.

The Secretary under Title VIII of ANILCA must accord a preference to subsistence uses of fish and wildlife on public lands. It is the policy of the Department to minimize conflict between resource uses on public and non-public lands. The Board will consider the recommendations of the State regional councils and local advisory committees, public input and comment, and actions of the State Boards of Fisheries and Game, as reflected in the administrative record, as a basis for decisions related to subsistence. The Board will give full consideration to state regulatory measures for fish and game uses and, where appropriate, adopt such measures, including state seasons and bag limits. However, the Secretary reserves the discretion, as embodied in these regulations, to prescribe different regulatory measures on public lands to protect subsistence uses consistent with Section 804 of ANILCA.

§ 242.6 Information collection requirements.

(a) These rules contain information collection requirements subject to Office of Management and Budget (OMB) approval under 44 U.S.C. 3501 et seq. They apply to subsistence users of public lands in Alaska.

(1) Section 242.18, appeals. The information collection requirements contained in this section provide a standardized process to allow individuals the opportunity to appeal decisions of the Federal Subsistence Board. Submission is voluntary, but required to receive a final determination on their appeal. The Department of the Interior estimates that an appeal will take 4 hours to prepare and submit for consideration.

(2) Section 242.21(b), Federal permits. The information collection requirements contained in this section provide for permit-specific subsistence activities not authorized through the general adoption of State regulations. The information requested is required to obtain subsistence benefits on Federal lands. The Department estimates that the average time necessary to obtain and comply with this permit information collection requirement is 15 minutes.

(3) The remaining information collection requirements contained in this part imposed upon subsistence users are those adopted from State regulations. The information collection requirements are required to obtain subsistence benefits on Federal lands in Alaska. The Department estimates that the average burden imposed upon individuals will be 8 minutes.

(b) Direct comments on the burden estimate or any other aspect of this form to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW., MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503. Additionally, information collection requirements may be imposed if the councils and committees subject to the Federal Advisory Committee Act are established under Subpart B. Such requirements will be submitted to OMB for approval prior to their implementation.

Subpart B—Program Structures

§ 242.10 Federal Subsistence Board.

(a) Subsistence taking and uses of fish and wildlife on public lands shall be administered by a Federal Subsistence Board.

(b) *Membership.* (1) The Board shall consist of the Alaska Regional Director, Fish and Wildlife Service; Alaska Regional Director, National Park Service; Alaska Regional Forester, USDA-Forest Service; the Alaska State Director, Bureau of Land Management; and the Alaska Area Director, Bureau of Indian Affairs. Each member of the Board may appoint a designee.

(2) The Board shall have a chair to be appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture.

(c) *Powers and Duties.* (1) Meetings shall occur at least annually, and at such other times as deemed necessary by the Board. Meetings will normally occur at the call of the Chair, but any member may request a meeting.

(2) A quorum shall consist of three members but no action may be taken unless three members are in agreement.

(3) The Board is empowered, to the extent necessary to implement Title VIII of ANILCA, to:

(i) Promulgate regulations for the management of subsistence taking and uses of fish and wildlife on public lands;

(ii) Establish rules and procedures for the operation of the Board, the regional advisory councils and local advisory committees established pursuant to this part;

(iii) Apply a subsistence priority, as necessary for rural Alaska residents on public lands;

(iv) Assess the biological status of fish and wildlife populations used for subsistence on public lands;

(v) Determine if a harvest from populations of fish and wildlife is consistent with maintaining healthy fish and wildlife populations on public lands except NPS lands;

(vi) Make rural and non-rural determinations;

(vii) Determine which rural Alaska areas or communities have customary and traditional subsistence uses of fish and wildlife, as necessary. For areas managed by the National Park Service, where subsistence uses are allowed, the determinations may extend to individual local rural residents;

(viii) Review and respond to proposals by regional advisory councils for regulation, management plans, policies, and other matters related to subsistence taking and uses of fish and wildlife;

(ix) Close public lands to the taking of fish and wildlife authorized by State fish and game laws and regulations which may adversely affect subsistence taking and uses on those lands;

(x) Prioritize subsistence taking of fish and wildlife among users when necessary to maintain healthy fish and wildlife populations based on application of the following criteria:

(A) Customary and direct dependence upon the populations as the mainstay of livelihood;

(B) Local residency; and

(C) The availability of alternative resources.

(xi) Restrict or eliminate harvest of fish and wildlife by subsistence users if necessary to maintain healthy fish and wildlife populations, or for reasons of public safety, or administration;

(xii) Establish at least six geographic subsistence resource regions;

(xiii) Establish a regional advisory council in each subsistence resource region and appoint its members pursuant to the Federal Advisory Committee Act;

(xiv) Establish local advisory committees within the subsistence resource regions as necessary and appoint their members pursuant to the Federal Advisory Committee Act.

(xv) Such other duties as are necessary to implement the Secretary's responsibilities under Title VIII of ANILCA.

(4) The Board shall consider the reports and recommendations of the Councils concerning the subsistence take of fish and wildlife on the public lands within their respective regions. The Board may choose not to follow any recommendation which it determines is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. If a recommendation is not adopted, the Board shall set forth the factual basis and the reasons for the decision.

(5) The Board will establish a Staff Committee composed of personnel from the U.S. Fish and Wildlife Service, National Park Service, USDA-Forest Service, Bureau of Land Management, and Bureau of Indian Affairs for administrative assistance. Personnel from other Federal and State agencies will be invited to participate on the Staff Committee as appropriate. The Staff Committee's functions will include, but not be limited to:

(i) Making recommendations concerning the biological status of fish and wildlife populations;

(ii) Making recommendations on which communities or areas are "rural" and which have demonstrated "customary and traditional uses"; and

(iii) Compiling records of subsistence harvest of fish and wildlife resources.

(6) Additional committees may be formed as necessary to assist the Board.

(7) The Board may review and revise or rescind its actions.

(8) The Fish and Wildlife Service shall provide appropriate administrative support for the Board.

§ 242.11 Regional advisory councils.

(a) The Secretary shall during the effective period of these regulations review and determine the adequacy, for the purposes of the Secretary's responsibilities under Title VIII of ANILCA, the existing State:

(1) Subsistence resource regions;

(2) Regional advisory councils; and

(3) Local advisory committees.

(b) If the Secretary determines pursuant to paragraph (a) of this section that the subsistence resource regions, regional advisory councils or local advisory committees are inadequate to fulfill the functions described in Section 805 of ANILCA, he shall establish subsistence resources region, regional advisory councils or local advisory committees in accordance with this section and § 242.12.

(c) Pending the review and determination required by paragraph (a) of this section, the Federal Subsistence Board shall review the proposals, actions, and associated public comments contained in the administrative record produced by the existing State Boards of Fisheries and Game, Regional Advisory Councils, and local advisory committees. This review shall be an interim measure to gain the public input described in Section 805 of ANILCA.

(d) The Board shall establish a Regional Advisory Council for each subsistence resource region within 12 months from the date of the Secretary's determination pursuant to paragraph (a) of this section, if the Secretary determines existing State Regional Advisory Councils are inadequate to meet the requirements of Section 805 of ANILCA. The Councils will provide a regional forum for the collection and expression of opinions and recommendations on matters related to subsistence taking and uses of fish and wildlife resources on public lands. The Councils will provide for public participation in the regulatory process.

(e) Establishment of Councils-Membership—

(1) The number of members of each council shall be established by the Board, and shall be an odd number. A Council member must be a resident of the region in which he/she is appointed and be knowledgeable about the region and subsistence uses therein. The Board shall solicit nominations from the public. Appointments to the Councils are made by the Board.

(2) Council members shall serve 3 year terms and may be reappointed. Initial members shall have staggered terms.

(3) The Chair of the Council shall be elected by the Council for a one year term and may be reelected.

(f) Powers and Duties—

(1) The Councils are empowered to:

(i) Hold public meetings on fish and wildlife subsistence matters;

(ii) Elect officers;

(iii) In consultation with the local advisory committees in its region; review, evalute, and make recommendations to the Board on any existing or proposed regulation, policy, or management plan, or any other matter relating to the subsistence take of fish and wildlife within or affecting its region.

(2) The Councils shall:

(i) Prepare and submit to the Board an annual report containing;

(A) An identification of current and anticipated subsistence uses of fish and wildlife populations within the region;

(B) An evaluation of current and anticipated subsistence needs for fish and wildlife populations within the region;

(C) A recommended strategy for the management of fish and wildlife populations within the region to accommodate such subsistence uses and needs; and

(D) Recommendations concerning policies, standards, guidelines, and regulations to implement the strategy.

(ii) Provide a forum for, and assist the local advisory committees in obtaining the opinions and recommendations of rural residents interested in subsistence taking and uses of fish and wildlife.

(iii) Attempt to develop areas of compromise and reach a regional consensus if differences of opinion exist among the local advisory committees.

(iv) Perform other duties specified by the Board.

(3) Each Council must comply with rules of operation established by the Board.

(g) The Fish and Wildlife Service shall provide appropriate financial, technical and administrative assistance to the Councils.

§ 242.12 Local advisory committees.

(a) The Board shall establish local advisory committees as deemed necessary within each subsistence resource region, if the Secretary determines pursuant to § 242.11(a) that the existing state local advisory committees are inadequate to fulfill the requirements of ANILCA Section 805. The committees will provide a local public forum for the collection and expression of opinions and recommendations on matters related to subsistence taking and uses of fish and wildlife, may make recommendations to the councils concerning regulations, and will provide for public participation in the regulatory process to help adequately protect subsistence uses.

(b) Establishment and membership of committees—

(1) Committees and their membership shall be recommended by the Regional Councils to the Board. The membership of each committee shall be an odd number. Members must be residents of the local area, and be knowledgeable about the area and subsistence uses. Nominations will be from the Councils. Authorizations of and appointments to the committees are made by the Board.

(2) Committee members shall serve 3 year terms and may be reappointed. Initial appointments shall have staggered terms.

(3) The Chair of the committee shall be elected by the committee for a one year term and may be reelected.

(4) When considering a request by a Council to create a committee, the Board will consider:

(i) Whether existing representation is adequate, and

(ii) Whether participation in the Board's decision making process would be enhanced meaningfully.

(c) Powers and Duties—

(1) The committees are empowered to:

(i) Elect officers;

(ii) Provide a local forum for proposing regulations of subsistence taking and uses of fish and wildlife, habitat management, and assisting the Councils in obtaining the opinions and recommendations of rural residents interested in subsistence taking and uses of fish and wildlife matters;

(iii) Develop regulatory proposals for submission to the Council;

(iv) Evaluate regulatory proposals submitted to the committees and make recommendations to the Council and Board;

(v) Advise the appropriate regional council regarding the conservation, development, and subsistence use of fish and wildlife resources;

(vi) Work with the appropriate regional council to develop subsistence management plans and harvest strategy proposals; and

(vii) Cooperate and consult with interested persons and organizations, including government agencies, to accomplish their charge,

(viii) Perform other duties specified by the Board.

(2) Committees must comply with rules of operation established by the Board.

(d) The Fish and Wildlife Service shall provide appropriate financial, technical, and administrative assistance to the committees.

§ 242.13 Board/agency relationships.

(a) *General.* (1) The Board, in making decisions or recommendations, shall consider and ensure compliance with specific statutory requirements regarding the management of resources on conservation system units or other public lands, recognizing that the management policies applicable to some units may entail methods of resource and habitat management and protection different from methods appropriate for other units.

(2) The Board shall promulgate a single set of regulations for subsistence taking of fish and wildlife on public lands. An agency may submit proposed regulations to the Board for inclusion. The Board is the final administrative authority on the promulgation of regulations relating to the subsistence taking of fish and wildlife on public lands, unless the Secretary at his discretion chooses to exercise his review authority.

(3) Nothing in these regulations shall abrogate the authority of individual Federal agencies to promulgate regulations necessary for the proper management of lands under their jurisdiction in accordance with ANILCA and other existing laws.

(b) Section 808 of ANILCA establishes park and park monument Subsistence Resource Commissions. Nothing in these regulations affects the appointments, duties or authorities of those Commissions.

§ 242.14 Relationship to state procedures and regulations.

(a) State of Alaska fish and wildlife regulations, other than subsistence regulations, apply to public lands unless the Board finds it necessary to promulgate regulations which supersede State regulations in order to ensure the opportunity for subsistence take of fish or wildlife on public lands.

(b) The Board may close public lands to hunting and fishing, or establish seasons and bag limits different from the State. Such regulations may be implemented through individual agency closure authority. Where applicable to all public lands such regulations will be promulgated by the Board. The Board may allow State closures to stand which serve to achieve the objectives of Title VIII of ANILCA.

§ 242.15 Board determinations.

(a) *Healthy Fish and Wildlife Populations.* Determinations of healthy populations of fish and wildlife shall be based upon the maintenance of fish and wildlife resources and their habitats in a condition which assures stable and continuing natural populations and species mix of plants and animals in relation to their ecosystems and minimizes the likelihood of irreversible or long term adverse effects upon such populations and species. Natural populations, for this section, shall include existing, nonindigenous populations. Such determinations shall also recognize that customary and traditional subsistence uses by local rural residents may be a natural part of such ecosystems. Habitat manipulation or control of other species for the purpose of maintaining subsistence uses is not authorized within National Park System Units.

(b) *Rural Determinations.* Not later than December 31, 1990, the Board shall determine the rural or non-rural status of all areas or communities within Alaska. Pending such determination each area or community will retain its rural or non-rural status pursuant to Alaska Administrative Code (5 AAC 99.014). In determining whether a particular area of Alaska is rural, the Board will use the procedures set forth in § 3.16 and use the following guidelines.

(1) A community or area with a population of 2500 or less will be deemed to be rural unless such a community or area possesses significant characteristics or a non-rural nature, or is part of an urbanized area.

(2) Communities or areas with populations between 2500 and 7000 will be determined rural or non-rural before other areas or communities are reviewed. The characteristics identified pursuant to § 242.15(b)(5) will be used to make these determinations.

(3) A community with a population of 7000 or more is presumed non-rural, unless such a community or area possesses significant characteristics of a rural nature.

(4) Population data from the most recent census conducted by the United States Bureau of Census as updated by the Alaska Department of Labor will be utilized in this process.

(5) Community or area characteristics will be considered in evaluating a community's rural or non-rural status. The characteristics may include, but are not limited to: Fish and wildlife use; and development and diversity of: the economy, transportation, communication links, community infrastructure, educational and cultural institutions, and government institutions.

(6) Communities or areas which are economically, socially and communally integrated will be considered in the aggregate.

(c) *Customary and Traditional Determinations.* Not later than December 31, 1991, the Board shall determine, as necessary, customary and traditional uses of fish and wildlife by rural communities on public lands. Pending such determinations, existing determinations by the Alaska Boards of Fisheries and Game, as codified in 5 AAC, are adopted by these regulations. In making determinations of whether uses of fish and wildlife are customary and traditional, the Board may examine but not be limited to the following factors which exemplify customary and traditional use:

(1) The length, consistency and pattern of use.

(2) The degree of past and current reliance upon particular subsistence uses near or reasonably accessible from the user's place of residence.

(3) Whether current consistent use patterns provide substantial economic, cultural, social, or nutritional elements of the subsistence users' lives, as related to the importance of such

uses to subsistence users' lives in the past.

(4) How the methods and means of taking relate to efficiency and economy of effort and cost, as conditioned by local circumstances, and as related to past methods and means of taking.

(5) Whether the present means of handling, preparing, preserving, and storing fish or game have been traditionally used by past generations—without excluding consideration of recent technological advances where appropriate.

(6) The passage of knowledge of fishing and hunting skills, values, and lore from generation to generation.

(7) Distribution or sharing of hunting or fishing effort, or the products of that effort (by customary trade, barter, sharing, and gift-giving), among others according to custom and tradition.

§ 242.16 Regulation adoption process.

(a) The public shall be provided opportunities to participate in and comment on proposed changes in the regulations. The regulation adoption process should reasonably coincide with the State of Alaska's annual process of establishing fish and game regulations.

(b) Early in the regulatory year the Board shall provide to the Councils and committees, once established, and public a schedule of the regulatory and amendment process.

(c) The committees and Councils must submit proposals to the Board in compliance with the schedule. Committee proposals must be submitted through the Councils. Proposals, however, may originate from any source; but to receive full consideration, must meet the published schedule. Proposals originating from individuals other than the Board, Councils or committees will be referred by the Board to the Councils for comments. Each Council and committee shall hold at least one public meeting per year in its region or area to solicit public comment on proposals. The publics' and Councils' comments shall be forwarded to the Board in accordance with the schedule.

(d) The Board, based on comments from the Councils and public, and on resource and resource use information, shall develop draft regulations, publish a notice of availability in the Federal Register, and provide other public notice necessary to obtain public participation. A comment period of no less than 30 days shall be provided. The Board shall hold at least one public meeting to obtain public comment on the proposed regulations.

(e) Following the comment period, the final regulations shall be published in the FEDERAL REGISTER and will become effective on the date of publication or such later date as may be determined by the Board.

§ 242.17 Closures.

(a) The Board may make or direct temporary closures of subsistence taking on public lands, if necessary, for reasons of public safety, administration, or to assure the continued viability of a particular fish or wildlife population. In so doing, the Board will consult with the State, and provide adequate notice and public hearing, including at least one hearing in the vicinity of the affected communities.

(b) In an emergency situation, the Board may direct immediate closure of public lands to any or all hunting or fishing, including subsistence take. The Board shall publish notice and reasons justifying the closure in the FEDERAL REGISTER and in newspapers of the area(s) affected. The closure shall be effective when made, may not exceed 60 days, and may not be extended unless it is determined, after notice and hearing, that such closure should be extended.

(c) Any closure, pursuant to Title VIII, exclusive of those made through the annual regulatory process, which does not apply to all public lands will be implemented through the regulations governing such closures by each agency which manages public land in Alaska. Public notification and involvement procedures of the involved agency(s) shall be followed.

(d) Based on emergency need for subsistence, the Board may extend or change seasons or increase bag limits. The Board may consider an emergency under this item only upon a petition from an affected rural resident or community. If such changes are granted they shall be for the minimum time period and bag limit necessary to meet the need and may be made only after a determination by the Board that the proposed change will not affect the maintenance of healthy fish and wildlife populations. The decision of the Board shall be the final administrative action.

§ 242.18 Appeals.

(a) Decisions of the Board are subject to requests for reconsideration.

(b) Any affected person may file a request for reconsideration.

(c) To file a request for reconsideration, the requestor must notify the Board in writing within 45 days of the date on the notice of the written decision for which reconsideration is requested.

(d) It is the responsibility of a requestor to provide the Board with sufficient narrative evidence and argument to show why a decision by the Board should be reconsidered. The following information must be included in the request for reconsideration:

(1) The requestor's name, mailing address, and daytime telephone number (if any);

(2) The decision for which reconsideration is requested and the date of that decision;

(3) A statement of how the requestor is adversely affected by the decision;

(4) A statement of the facts of the dispute, the issues raised by the request, and specific references to any law, regulation, or policy that the requestor believes to be violated and the reason for such allegation;

(5) A statement of how the requestor would like the decision changed.

(e) Stays. (1) A decision may be implemented while the Board is reconsidering that decision unless the Board grants a stay.

(2) If a stay is desired, the stay request must accompany the request for reconsideration. The stay request must contain a description of the decision to be stayed, specific reasons why the stay should be granted including specific adverse effect(s) upon the requestor, harmful site-specific impacts or effects on resources, and how the cited effects and impacts would prevent a meaningful reconsideration of the decision.

(3) The Board must issue a written decision on a stay request within 10 calendar days of receiving a stay request.

(f) The Board shall make a final decision on a request for reconsideration within 45 days after receiving such a request. The decision of the Board is the final administrative remedy except as specified in paragraph (g) of this section. Further relief is only available through the courts.

(g) The Secretary, at his discretion, may review actions by the Board.

(h) Decisions by a Federal agency outside its role on the Board are subject to appeal under the appeal procedures of that agency.

(i) Regulations in subpart D of this rule are subject to motions for reconsideration to the Board. Such motion must be filed by September 30, 1990, according to the procedures in paragraph (d) of this section. The Board shall respond according to the procedures in paragraph (f) of this section.

Subpart C—General Requirements

§ 242.20 Subsistence use qualifications.

(a) The taking of fish and wildlife on public lands for subsistence uses as defined in § 242.4 is restricted to Alaska residents of rural areas or communities. Non-rural residents are not provided a preference for the taking of fish and wildlife on public lands.

(b) This section does not limit the authority of the Board, or individual Federal land management agencies, to further restrict the class of qualifying subsistence users in particular cases based upon specific authority in ANILCA or other Federal statutes.

§ 242.21 Licenses, permits, harvest tickets, tags, and fees.

(a) Persons engaged in subsistence activities related to the taking of fish and wildlife on public lands must possess State of Alaska licenses, permits, harvest tickets, and tags and must comply with reporting and validation requirements, except where such requirements conflict with Federal requirements. The intent of these regulations is to maximize the use of the State license and permit system, consistent with the sound management of fish and wildlife and fulfillment of the Secretary's Title VIII responsibilities.

(b) In addition to any licenses or permits required by paragraph (a) of this section, persons engaged in subsistence activities on public lands must possess any Federal licenses or permits that may be required for such activities.

(c) Upon request of a State or Federal law enforcement officer, individuals must produce: licenses, permits, harvest tickets, tags, or other pertinent documents required by this section; and, any apparatus designed to be, or capable of being used to harvest fish and wildlife.

§ 242.22 Penalties.

Any persons convicted of violating any provision of 50 CFR part 100 or 36 CFR part 242 may be punished by a fine or imprisonment or both in accordance with the penalty provisions prescribed by applicable law.

Subpart D—Subsistence Hunting, Trapping, and Fishing [1]

§ 242.23 Subsistence hunting and trapping.

(a) Definitions. The following definitions shall apply to all regulations contained in this subpart (derived from 5 AAC 92.990):

ADF&G means Alaska Department of Fish and Game.

Aircraft means a fixed-wing machine or device that is used or intended to be used to carry persons or objects through the air, including airplanes and gliders.

Airport means an airport listed in the Federal Aviation Agency, Alaska Airman's Guide and chart supplement.

Animal means those species with a vertebral column (backbone).

Bag limit means the number of any one species permitted to be taken by any one person in the unit or portion of a unit in which the taking occurs; however, additional numbers of a species may be taken in another designated open unit or portion of a unit where a greater limit on that species is prescribed. In no case may the total or cumulative bag for one person or designated group exceed the limit set for the unit or portion of a unit in which the additional animals are taken. A subsistence bag limit and a general bag limit for the same species are not cumulative.

Big game means black bear, brown and grizzly bear, bison, caribou, deer, elk, mountain goat, moose, musk oxen, mountain or Dall sheep, wolf and wolverine.

Bow means long bow, recurve bow, or compound bow, but not crossbow.

Broadhead means an arrowhead with two or more steel cutting edges having minimum cutting diameter of not less than seven-eights inch.

Brow tine means a tine on the front portion of a moose antler, typically projecting forward from the base of the antler toward the nose.

Bull moose means any male moose.

Closed season means the time when wildlife may not be taken.

Cub bear means a brown or grizzly bear in its first or second year of life, or a black bear (including cinnamon and blue phases) in its first year of life.

Dire emergency means a situation in which a person:

(a) Is in a remote area;

(b) is involuntarily experiencing an absence of food required for sustenance;

(c) will be unable to perform the functions necessary for survival, leading to a high risk of death or serious and permanent health problems if wild game food is not immediately taken and consumed; and

(d) cannot expect to obtain alternative food sources in time to avoid the consequences described in paragraph (c) of this definition.

Drawing permit means a permit issued in a limited number to people who are selected by means of a lottery held for all people submitting valid applications for such persons, and who agree to abide by the conditions specified for each hunt.

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[1] Subpart D of this part follows existing State Fish and Game regulations which are codified in Title 5 of the Alaska Administrative Code. In many cases the language is identical to state regulation or modified so it applies only to this Federal program on public lands. The regulations note particular State provisions from which they were derived.

Full curl horn means the horn of a male mountain or Dall sheep, the tip of at least one of which has grown through 360 degrees of a circle described by the outer surface of the horn, as viewed from the side, or that both horns are broken or that the sheep is at least eight (8) years of age as determined by horn growth annuli.

Fur animal means coyote, arctic fox, red fox, lynx, raccoon, or red squirrel, except domestically raised fur animals; "fur animals" is a classification of animals subject to taking with a hunting license.

Furbearer means beaver, coyote, arctic fox, red fox, lynx, marten, mink, weasel, muskrat, river (land) otter, raccoon, red squirrel, flying squirrel, marmot, wolf or wolverine.

Highway means the drivable surface of any constructed road.

Household means that group of people domiciled in the same residence.

Hunting area for a species means that portion of a game management unit where a subsistence season and a bag limit for that species are set.

Motorized vehicle means a motor-driven land or water conveyance.

Open season means the time when wildlife may be taken; each period prescribed as an open season includes the first and last days of the period prescribed.

Permit hunt means a hunt for which permits are issued by drawing, registration or other means.

Poison means any substance which is toxic or poisonous upon contact or ingestion.

Registration permit means a hunting permit issued to a person who agrees to the conditions specified for each hunt; permits are issued in the order applications are received, and are issued:

(a) Beginning on a date announced and continuing throughout the open season, or until the season is closed by emergency order when a harvested quota is reached; or

(b) Beginning on a date announced and continuing until a predetermined number of permits has been issued.

Sealing means placing a mark or tag on a portion of an animal by an authorized representative of the ADF&G; "sealing" includes collecting and recording information concerning the conditions under which the animal was harvested and measurements of the specimen submitted for sealing or surrendering a specific portion of the animal for biological information.

Seven-eights curl horn means the horn of a mountain sheep, the tip of which has grown through seven-eights of a circle (315 degrees), described by the outer surface of the horn, as viewed from the side, or with both horns broken.

Skin, hide and pelt are all the same thing, and mean any tanned or untanned external covering of an animal's body; skin, hide, or pelt of a bear shall mean the entire external covering with claws attached.

Small game means all species of grouse, hares, rabbits, ptarmigan, waterfowl, cranes and Wilson or jacksnipe.

Tine or antler point refers to any point on an antler whose length is at least one inch, and is greater in length than in width, measured in a straight line across the base.

Transport means shipping, carrying, importing, exporting, or receiving or delivering for shipment, carriage or export.

Unclassified game means all species of game not otherwise classified in the definitions.

Unit means one of the 26 geographical areas listed under game management units in the ADF&G's codified hunting, trapping and guiding regulations and the Game Management Unit Map of Alaska.

Year means calendar year unless another year is specified.

(b) Small game and unclassified game, fur animals, furbearers, big game, and waterfowl, snipe and cranes may be taken for subsistence by any method, unless prohibited below or by other Federal statute.

(1) The following methods of taking game are prohibited (derived from 5 AAC 92.080):

(i) By shooting from, on, or across a highway;

(ii) With the use of any poison;

(iii) Knowingly, or with reason to know, with the use of a helicopter in any manner, including transportation to or from the field of any unprocessed game or parts of game, any hunter or hunting gear, or any equipment used in the pursuit or retrieval of game; this paragraph does not apply to transportation of a hunter, hunting gear, or game during an emergency rescue operation in a life-threatening situation;

(iv) Unless otherwise provided in this chapter, from a mechanical vehicle, or from a motor-driven boat unless the motor has been completely shut off and the boat's progress from the motor's power has ceased, except that a motor-driven boat or snowmachine may be used to take caribou in (State Game Management Unit) Unit 23;

(v) With the use of an aircraft, snowmachine, motor-driven boat, or other motorized vehicle for the purpose of driving, herding, or molesting game;

(vi) With the use or aid of a machine gun, set gun, or a shotgun larger than 10 gauge;

(vii) With the aid of a pit, artificial light (except that coyotes may be taken in Units 6(B) and 6(C) with the aid of artificial lights), radio communication, artificial salt lick, explosive, barbed arrow, bomb, smoke, chemical, or a conventional steel trap with a jaw spread over nine inches; however, the "conibear" style trap with a jaw spread of less than 11 inches may be used;

(viii) With a snare, except for taking unclassified game, furbearer, grouse, hare, or ptarmigan;

(ix) By intentionally feeding a bear, wolf, fox, or wolverine, or intentionally leaving human food or garbage in a manner that attracts these animals. This does not apply to bait used for trapping furbearers or hunting black bears consistent with following regulations.

(2) The following methods and means of taking big game for subsistence are prohibited in addition to the prohibitions in paragraph (b)(1) of this section (derived from 5 AAC 92.075 and 92.085):

(i) With the use of a firearm other than a shotgun, muzzle-loaded rifle without scope, or rifle or pistol using a center-firing cartridge, except that:

(A) In Unit 23, swimming caribou may be taken with a firearm using rimfire cartridges;

(B) The use of a muzzleloading rifle is prohibited for brown/black bear, moose, bison, musk ox and mountain goat unless such a firearm is .54 caliber or larger, or at least .45 caliber and a 250 grain or larger elongated slug is used;

(ii) With a crossbow in any area restricted to hunting by bow and arrow only;

(iii) With a longbow, recurve bow, or compound bow unless the bow is capable of casting a broadhead-tipped arrow at least 175 yards horizontally, the arrow is tipped with a broadhead of at least 7/8" width, and arrow and broadhead together weigh at least one ounce (437.5 grains), and the broadhead is not barbed, and for special bow and arrow hunts only the hunter must have successfully completed an ADF&G approved bowhunter education course and minimum shot placement qualification test and carries an endorsement to this on their license;

(iv) With the use of bait; except that black bears may be taken with the use of bait between April 15 and May 31, in Units 1 (A)(B) and in Units 1 (A)(B)(D), 2, 3, 5, 6, 7 (except Resurrection Creek and its tributaries), 11, 13 and 16 (except Denali State Park) 15 and 17 between April 15 and June 15; and Units 12, 19–21, 24, and 25, between April 15 and June 30. Baiting of black bears is subject to the following restrictions:

(A) Only biodegradable materials may be used for bait; only the head, bones, viscera, or skin of legally harvested fish and game may be used for bait;

(B) No person may use bait within one-quarter mile of a publicly maintained road or trail;

(C) No person may use bait within one mile of a house or other permanent dwelling, or within one mile of a developed campground or developed recreational facility;

(D) A hunter using bait shall clearly mark the site with a sign reading "black bear bait stations" that also displays the person's hunting license

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number and ADF&G assigned number;

(E) A person using bait shall remove litter and equipment from the bait station site when hunting is completed;

(F) No person may give or receive remuneration for the use of a bait station, including barter or exchange of goods; however, this does not apply to license guide outfitters, who personally accompany the client at the bait station site;

(G) No person may have more than two bait stations established (bait present) at any one time;

(H) No person may establish a black bear bait station unless he or she first registers the site with ADF&G;

(v) With the aid or use of a dog, except that a dog may be used to hunt black bear by permit issued at the discretion of the ADF&G;

(vi) With the use of a trap or snare;

(vii) While a big game animal is swimming, except that a swimming caribou may be taken in Unit 23;

(viii) No person who has been airborne, except in regularly scheduled commercial jet aircraft flights, may take for subsistence uses a big game animal in a National Preserve units until 3:00 a.m. following the day in which the flying occurred.

(ix) No person who has been airborne, except in regularly scheduled commercial jet aircraft flights, may take for subsistence purposes or assist in taking a big game animal until after 3:00 a.m. following the day in which the flying occurred; however, this paragraph does not apply to subsistence taking of (a) deer, or to (b) subsistence taking of wolves during August 10-March 31 in the portions of Units 9, 17, 19, 21, 23, 24, 25(B), 25(C), and 25(D) that are not in a national preserve; additionally with respect to wolves:

(A) No person may take a wolf without first obtaining from ADF&G, a number registration permit and numbered, nontransferable locking tags;

(B) Shotguns may not be used to take wolves;

(C) A person taking a wolf shall immediately affix one of the tags to the skin of the wolf until the skin is sealed according to ADF&G procedures;

(x) From a boat in Units 1-5.

(3) The following methods and means of taking fur animals for subsistence under a hunting license are prohibited, in addition to the prohibitions in paragraph (b)(1) of this section (derived from 5 AAC 92.090):

(i) By using a dog, trap, snare, net, or fish trap;

(ii) By disturbing or destroying a den;

(iii) By having been airborne and using a firearm to take or assist in taking an arctic or red fox until after 3:00 a.m. on the day following the day in which the flying occurred.

(4) The following methods and means of taking furbearers for subsistence under a trapping license are prohibited, in addition to the prohibitions in paragraph (b)(1) of this section (derived from 5 AAC 92.095):

(i) By disturbing or destroying a den, except that any muskrat pushup or feeding house may be disturbed in the course of trapping;

(ii) By disturbing or destroying any beaver house;

(iii) Taking beaver by any means other than a steel trap or snare, except that a firearm may be used to take beaver in Unit 18 from April 1 through June 10, and in Units 8, 22, and 23 throughout the seasons established herein;

(iv) Taking land otter with a steel trap having a jaw spread of less than five and seven-eighths inches during any closed mink and marten season in the same game management unit;

(v) Using a dog, net, or fish trap (except a blackfish or fyke trap);

(vi) Taking beaver in the Minto Flats Management Area with the use of an aircraft for ground transportation or by landing within one mile of a beaver trap or set used by the person transported;

(vii) Taking a wolf in Units 12 and 20(E) during March, April or October with a steel trap, or with a snare smaller than 3X;

(viii) Having been airborne and using a firearm to take or assist in taking an arctic fox, red fox, wolf, or wolverine until after 3:00 a.m. on the day following the day in which the flying occurred; this paragraph does not apply to a trapper using a firearm to dispatch a fox, wolf, or wolverine caught in a trap or snare;

(ix) Taking a red fox in Unit 15 by any means other than a steel trap or snare.

(5) The following methods and means of hunting waterfowl, snipe, and cranes for subsistence are prohibited, in addition to the prohibitions in paragraph (b)(1) of this section (derived from 5 AAC 92.100):

(i) With a rifle or pistol, a shotgun larger than 10 gauge, or a shotgun not plugged to 3 shell capacity;

(ii) From a motor-driven boat unless the motor has been completely shut off and the boat's progress from the motor's power has ceased;

(iii) From sunset to one-half hour before sunrise.

(c) Possession and Transportation of Wildlife (derived from 5 AAC 92.130 and 92.140):

(1) Unless otherwise provided, no person may take a species of game in any unit or portion of a unit if that person's total statewide take of that species already equals or exceeds the bag limit for that species in that unit or portion of a unit except as specified in paragraph (c)(3) of this section.

(2) The bag limit specified herein for a subsistence season for a species and the state bag limit set for a state general season for the same species are not separate and distinct. This means that a person or designated group who has taken the bag limit for a particular species under a subsistence season specified herein may not after that, take any additional animals of that species under any other bag limit specified for a State general season.

(3) The bag limit specified for a trapping season for a species and the bag limit set for a hunting season for the same species are separate and distinct. This means that a person who has taken a bag limit for a particular species under a trapping season may take additional animals under the bag limit specified for a hunting season or vice versa.

(4) The bag limit for brown bear in Unit 20(E) is one bear per regulatory year; a bear taken in this unit does not count against the one bear for every regulatory year bag limit in other units.

(5) A bag limit applies to a regulatory year unless another time period is specified in the bag limit.

(6) No person may possess, transport, or give, receive or barter game or parts of game that the person knows or should know were taken in violation of Federal or State statutes or a regulation promulgated thereunder.

(d) Evidence of sex and identity (derived from 5 AAC 92.150):

(1) No person may possess or transport a mountain sheep unless both horns accompany the animal if the subsistence take is restricted to a single sex.

(2) If the subsistence taking of a big game animal, except sheep, is restricted to one sex, no person may possess or transport the carcass of an animal unless sufficient portions of the external sex organs remain attached to indicate conclusively the sex of the animal; however, this section does not apply to the carcass of a big game animal that has been cut and placed in storage or otherwise prepared for consumption upon arrival at the location where it is to be consumed.

(3) If a moose bag limit includes an antler size or configuration restriction, no person may possess or transport the moose carcass or its parts unless both antlers accompany the carcass or its parts. A person possessing a set of antlers with less than the required number of brow tines on one antler shall leave the antlers naturally attached to the unbroken, uncut skull plate; however, this subsection does not apply to a moose carcass or its parts that have been cut and placed in storage or otherwise prepared for consumption after arrival at the place where it is to be stored or consumed.

(4) Until the hide has been sealed by a representative of the ADF&G, no person may possess or transport the hide of a brown bear taken in Unit 4 which does not have the penis sheath or vaginal orifice naturally attached to indicate conclusively the sex of the bear.

(e) A person who takes an animal that has been marked or tagged for scientific studies must, within a reasonable time, notify the ADF&G or an agency, if identified on the collar or marker, when and where the animal

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was killed. Any ear tag, collar, radio, tattoo, or other identification must be retained with the hide until it is sealed, if sealing is required, and in all cases any identification equipment must be returned to the ADF&G or to an agency identified on such equipment (derived from 5 AAC 92.160).

(f) Sealing of bear skins and skulls (derived from 5 AAC 92.156)

(1) As used in this section,

Bear means brown bears in all units, and black bears of all color phases taken in Units 1-7, 11-16, and 20;

Sealing certificate means a form used by the ADF&G for recording information when sealing a bear.

Temporary sealing form means a form available at ADF&G offices for providing information regarding date and location of bear kill, species of bear, name and address of the hunter, name of the guide, and other information requested by the ADF&G on the form;

(2) No person may possess, transport, or export from Alaska, the untanned skin or skull of a bear unless the skin and skull have been sealed by an authorized representative of the ADF&G within 30 days after the taking, or a lesser time if requested by the ADF&G. The seal must remain on the skin until the tanning process has commenced. A brown bear taken in Units 8 or 12 may not be transported from that unit until it has been sealed. A brown bear taken in Unit 20(E) may not be transported from that unit, except to Tok, until it has been sealed.

(3) Except as provided in paragraph (c) of this Section, a person who kills a bear must personally present the skin and the skull to an authorized representative of the ADF&G for sealing within 30 days after the taking, or a shorter time if requested by the ADF&G, and must sign the sealing certificate at the time of sealing.

(4) A person who takes a bear but is unable to present the skin and skull in person must complete and sign a temporary sealing form and ensure that the completed temporary sealing form, along with the bear skin and skull, are presented to an authorized representative of the ADF&G for sealing within 30 days after the taking.

(5) If a person kills a brown bear, while on a guided hunt or while hunting with a resident relative, the hunter, as well as the guide or resident relative who accompanied the hunter, shall sign the sealing certificate. If a temporary sealing form is used, the hunter, as well as the guide or resident relative, shall sign the temporary sealing form.

(6) A person who possesses a bear shall keep the skin and skull together until a representative of the ADF&G has removed a rudimentary premolar tooth from the skull and sealed both the skull and the skin. The ADF&G may require that the skull of the bear be skinned and that the skin and skull not be frozen at the time of sealing.

(7) No person may falsify any information required on the sealing certificate or temporary sealing form provided by the ADF&G.

(g) Sealing of Martin, Lynx, Beaver, Otter, Wolf, and Wolverine (derived from 5 AAC 92.170).

(1) No person may possess, transport, or export from the state the untanned skin of a marten taken in Units 1-5, 7, and 15, or the untanned skin of a lynx, beaver, land otter, wolf, or wolverine, whether taken inside or outside the state, unless the ADF&G has sealed the skin. The seal must remain on the skin until the tanning process has commenced or the skin has been transported from the state; however, the seal may be removed from the skin of a marten taken in Units 1-5 when the skin has been prepared for shipment from the state.

(2) The sealing of marten, lynx, beaver, land otter, wolf, or wolverine must be accomplished as follows:

(i) Wolf (in Unit 15(A)) taken by hunting or trapping must be sealed on or before the 5th day after the date of taking;

((ii) Wolf (except in Unit 15(A)), wolverine, and lynx taken by hunting must be sealed on or before the 30th day after the date of taking;

(iii) Marten (Units 1-5, 7, and 15 only), wolf (except in Unit 15(A)), wolverine, lynx, beaver, and otter taken by trapping must be sealed on or before the 30th day after the close of the season on or before the 30th day after the close of the season in the unit where taken.

(3) The sealing periods described in paragraph (g)(2) of this section may be temporarily reduced by an authorized employee of the ADF&G.

(4) A person who takes a species listed in paragraph (g)(2) of this section must bring the skin for sealing to an authorized representative of the ADF&G and must complete a report on a form provided by the ADF&G.

(h) No person may use game as food for a dog or furbearer, or as bait, except for the following (derived from 5 AAC 92.210):

(1) The hide, skin, viscera, head, or bones of game;

(2) The skinned carcass of a furbearer or fur animal;

(3) Red squirrels and small game; however, the breast meat of small game birds may not be used as animal food or bait;

(4) Legally taken unclassified game.

(i) The following definitions shall apply to this paragraph (derived from 5 AAC 92.220):

Edible meat means, in the case of big game animals, the meat of the ribs, neck, brisket, front quarters as far as the juncture of the humerus and radius-ulna (knee), hindquarters as far as the distal joint of the tibia-fibula (stifle joint) and that portion of the animal between the front and hindquarters; in the case of wild fowl, the meat of the breast; however, edible meat of big game, wild fowl or fish does not include: meat of the head; meat that has been damaged and made inedible by the method of taking, bones, sinew and incidental meat reasonably lost as a result of boning or a close trimming of the bones; or viscera.

Wild fowl means species of wild bird for which seasons or bag limits have been established by State or Federal law.

(j) A person taking game for subsistence shall salvage the following parts for human use:

(1) The hide of a wolf, wolverine, coyote, fox, lynx, marten, mink, weasel and land otter, and the hide or meat of a beaver or muskrat;

(2) The hide, skull and edible meat of a brown bear;

(3) The hide, skull and edible meat of a black bear.

(k) A person who kills a big game animal or a species of wild fowl may not intentionally, knowingly, recklessly, or with criminal negligence fail to salvage for human consumption the edible meat of the animal or fowl.

(l) Failure to salvage or possess the edible meat may not be a violation if due to circumstances beyond the control of a person, including theft of the animal or fowl, unanticipated weather conditions or other acts of God, or unavoidable loss in the field to another wild animal.

(m) If a person is convicted of violating this section and in the course of that violation failed to salvage from a big game animal at least the hindquarters as far as the distal joint of the tibia-fibula (stifle joint), the court shall impose a sentence of imprisonment of not less than seven consecutive days and a fine of not less than $2,500.

(n) It is unlawful for a person to possess the horns or antlers of a big game animal that was killed after the opening of the current or most recent lawful season for the animal unless the person also possesses the edible meat of the animal. However, this does not apply to the acquisition of the horns or antlers as a gift after the edible meat of the big game animal was salvaged, or the edible meat is no longer present due to personal consumption.

(o) Subsistence taking of fish or wildlife shall not be considered an emergency taking. Situations where emergency taking of wildlife are allowed are defined in paragraph (a)(13) of this Section.

(p)(1) Nothing in this subpart prohibits a person from taking wildlife in defense of life or property if (derived from 5 AAC 92.410):

(i) The necessity for the taking is not brought about by harassment or provocation of the animal or an unreasonable invasion of the animal's habitat;

(ii) the necessity for the taking is not brought about by the improper disposal of garbage or a similar attractive nuisance; and

(iii) all other practicable means to protect life and property are exhausted before the animal is taken.

(2) Wildlife taken in defense of life or property is the property of the State and is not a subsistence taking. A person taking such wildlife is required to salvage immediately the meat, or, in the case of a black bear, wolf, wolverine, or coyote, the hide including claws and surrender it to the State immediately. All bear hides surrendered (brown or black) must include claws. In the case of brown or grizzly bear, the hide and skull must be salvaged and surrendered to the State immediately. The person taking the wildlife must notify the ADF&G of the taking immediately and must submit a written report of the circumstances of the taking of wildlife in defense of life or property to the ADF&G within 15 days of the taking. As used in this section, "property" is limited to:

(i) A dwelling, permanent or temporary.

(ii) An aircraft, boat, automobile, or other means of conveyance;

(iii) A domesticated animal.

(iv) Other property of substantial value necessary for the livelihood or survival of the owner. Game taken by hunters is not "property" in the sense of this regulation.

(q) Subsistence harvest of Endangered or Threatened species will conform to provisions of the Endangered Species Act, as amended, and its implementing regulations.

(r) Subsistence harvest of Marine Mammals will conform to the provisions of the Marine Mammal Protection Act, as amended, and its implementing regulations.

(s) Game management unit descriptions.

(1) Game Management Unit 1 consists of all mainland drainages from Dixon Entrance to Cape Fairweather, and those islands east of the center line of Clarence Strait from Dixon Entrance to Camano Point and all islands in Stephens Passage and Lynn Canal north of Taku Inlet;

(i) Unit 1(A) consists of all drainages south of the latitude of Lemesurier Point including all drainages into Behm Canal and excluding all drainages of Ernest Sound;

(ii) Unit 1(B) consists of all drainages between the latitude of Lemesurier Point and the latitude of Cape Fanshaw, including all drainages of Ernest Sound and Farragut Bay, and including the islands east of the center lines of Frederick Sound, Dry Strait (between Sergief and Kadin Islands), Eastern Passage, Blake Channel (excluding Blake Island), Ernest Sound and Seward Passage;

(iii) Unit 1(C) consists of that portion of Unit 1 draining into Stephens Passage and Lynn Canal north of Cape Fanshaw and south of the latitude of Eldred Rock, including Berner's Bay, Sullivan Island, and all mainland portions north of Chichagof Island and south of the latitude of Eldred Rock, and excluding drainages into Farragut Bay;

(iv) Unit 1(D) consists of that portion of Unit 1 north of the latitude of Eldred Rock, excluding Sullivan Island and the drainages of Berners Bay;

(2) Game Management Unit 2 consists of Prince of Wales Island and all islands west of the center lines of Clarence Strait and Kashevarof Passage, south and east of the center lines of Sumner Strait, and east of the longitude of the westernmost point on Warren Island;

(3) Game Management Unit 3 consists of all islands west of Unit 1(B), north of Unit 2, south of the center line of Frederick Sound, and east of the center line of Chatham Strait, including Coronation, Kuiu, Kupreanof, Mitkof, Zarembo, Kashevarof, Woronkofski, Etolin, Wrangell, and Deer Islands;

(4) Game Management Unit 4 consists of all islands south and west of Unit 1(C) and north of Unit 3, including Admiralty, Baranof, Chichagof, Yakobi, Inian, Lemesurier, and Pleasant Islands;

(5) Game Management Unit 5 consists of all Gulf of Alaska drainages and islands between Cape Fairweather and the center line of Icy Bay, including the Guyot Hills;

(i) Unit 5(A) consists of all drainages east of Yakutat Bay, Disenchantment Bay, and the eastern edge of Hubbard

Glacier, and includes the islands of Yakutat and Disenchantment Bays;

(ii) Unit 5(B) consists of the remainder of Unit 5;

(6) Game Management Unit 6 consists of all Gulf of Alaska and Prince William Sound drainages from the center line of Icy Bay (excluding the Guyot Hills) to Cape Fairfield, including Kayak, Hinchinbrook, Montague, and adjacent islands, and Middleton Island, but excluding the Copper River drainage upstream from Miles Glacier, and excluding the Nellie Juan and Kings River drainages;

(i) Unit 6(A) consists of Gulf of Alaska drainages east of Palm Point near Katalla, including Kanak, Wingham, and Kayak Islands;

(ii) Unit 6(B) consists of Gulf of Alaska and Copper River Basin drainages west of Palm Point near Katalla, east of the west bank of the Copper River, and east of a line from Flag Point to Cottonwood Point;

(iii) Unit 6(C) consists of drainages west of the west bank of the Copper River, and west of a line from Flag Point to Cottonwood Point, and drainages east of the east bank of Rude River and drainages into the eastern shore of Nelson Bay and Orca Inlet;

(iv) Unit 6(D) consists of the remainder of Unit 6;

(7) Game Management Unit 7 consists of Gulf of Alaska drainages between Gore Point and Cape Fairfield, including the Nellie Juan and Kings River drainages, and including the Kenai River drainage upstream from the Russian River, the drainages into the south side of Turnagain Arm west of and including the Portage Creek drainage, and east of 150° W. long., and all Kenai Peninsula drainages east of 150° W. long., from Turnagain Arm to the Kenai River;

(8) Game Management Unit 8 consists of all islands southeast of the centerline of Shelikof Strait, including Kodiak, Afognak, Whale, Raspberry, Shuyak, Spruce, Marmot, Sitkalidak, Amook, Uganik, and Chirikof Islands, the Trinity Islands, the Semidi Islands, and other adjacent islands;

(9) Game Management Unit 9 consists of the Alaska Peninsula and adjacent islands, including drainages east of False Pass, Pacific Ocean drainages west of and excluding the Redoubt Creek drainage, drainages into the south side of Bristol Bay, drainages into the north side of Bristol Bay east of Etolin Point, and including the Sanak and Shumagin Islands;

(i) Unit 9(A) consists of that portion of Unit 9 draining into Shelikof Strait and Cook Inlet between the southern boundary of Unit 16 (Redoubt Creek) and the northern boundary of Katmai National Park and Preserve;

(ii) Unit 9(B) consists of the Kvichak River drainage;

(iii) Unit 9(C) consists of the Alagnak (Branch) River drainage, the Naknek River drainage, and all land and water within Katmai National Park and Preserve;

(iv) Unit 9(D) consists of all Alaska Peninsula drainages west of a line from the southernmost head of Port Moller to the head of American Bay, including the Shumagin Islands and other islands of Unit 9 west of the Shumagin Islands;

(v) Unit 9(E) consists of the remainder of Unit 9;

(10) Game Management Unit 10 consists of the Aleutian Islands, Unimak Island and the Pribilof Islands;

(11) Game Management Unit 11 consists of that area draining into the headwaters of the Copper River south of Suslota Creek and the area drained by all tributaries into the east bank of the Copper River between the confluence of Suslota Creek with the Slana River and Miles Glacier;

(12) Game Management Unit 12 consists of the Tanana River drainage upstream from the Robertson River, including all drainages into the east bank of the Robertson River, and the White River drainage in Alaska, but excluding the Ladue River drainage;

(13) Game Management Unit 13 consists of that area westerly of the east bank of the Copper River and drained by all tributaries into the west bank of the Copper River from Miles Glacier and including the Slana River drainages north of Suslota Creek; the drainages into the Delta River upstream from Falls Creek and Black Rapids Glacier; the drainages into the Nenana River upstream from the southeast corner of Denali National Park at Windy; the drainage into the Susitna

River upstream from its junction with the Chulitna River; the drainage into the east bank of the Chulitna River upstream to its confluence with Tokositna River; the drainages of the Chulitna River (south of Denali National Park) upstream from its confluence with the Tokositna River; the drainages into the north bank of the Tokositna River upstream to the base of the Tokositna Glacier; the drainages into the Tokositna Glacier; the drainages into the east bank of the Susitna River between its confluences with the Talkeetna and Chulitna Rivers; the drainages into the north bank of the Talkeetna River; the drainages into the east bank of the Chickaloon River; the drainages of the Matanuska River above its confluence with the Chickaloon River;

(i) Unit 13(A) consists of that portion of Unit 13 bounded by a line beginning at the Chickaloon River bridge at Mile 77.7 on the Glenn Highway, then along the Glenn Highway to its junction with the Richardson Highway, then south along the Richardson Highway to the foot of Simpson Hill at Mile 111.5, then east to the east bank of the Copper River, then northerly along the east bank of the Copper River to its junction with the Gulkana River, then northerly along the west bank of the Gulkana River to its junction with the West Fork of the Gulkana River, then westerly along the west bank of the West Fork of the Gulkana River to its source, an unnamed lake, then across the divide into the Tyone River drainage, down an unnamed stream into the Tyone River, then down the Tyone River to the Susitna River, then down the southern bank of the Susitna River to the mouth of Kosina Creek, then up Kosina Creek to its headwaters, then across the divide and down Aspen Creek to the Talkeetna River, then southerly along the boundary of Unit 13 to the Chickaloon River bridge, the point of beginning;

(ii) Unit 13(B) consists of that portion of Unit 13 bounded by a line beginning at the confluence of the Copper River and the Gulkana River, then up the east bank of the Copper River to the Gakona River, then up the Gakona River and Gakona Glacier to the boundary of Unit 13, then westerly along the boundary of Unit 13 to the Susitna Glacier, then southerly along the west bank of the Susitna Glacier and the Susitna River to the Tyone River, then up the Tyone River and across the divide to the headwaters of the West Fork of the Gulkana River, then down the West Fork of the Gulkana River to the confluence of the Gulkana River and the Copper River, the point of beginning;

(iii) Unit 13(C) consists of that portion of Unit 13 east of the Gakona River and Gakona Glacier;

(iv) Unit 13(D) consists of that portion of Unit 13 south of Unit 13(A);

(v) Unit 13(E) consists of the remainder of Unit 13;

(14) Game Management Unit 14 consists of drainages into the north side of Turnagain Arm west of and excluding the Portage Creek drainage, drainages into Knik Arm excluding drainages of the Chickaloon and Matanuska Rivers in Unit 13, drainages into the north side of Cook Inlet east of the Susitna River, drainages into the east bank of the Susitna River downstream from the Talkeetna River, and drainages into the south bank of the Talkeetna River;

(i) Unit 14(A) consists of drainages in Unit 14 bounded on the west by the Susitna River, on the north by Willow Creek, Peters Creek, and by a line from the head of Peters Creek to the head of the Chickaloon River, on the east by the eastern boundary of Unit 14, and on the south by Cook Inlet, Knik Arm, the south bank of the Knik River from its mouth to its junction with Knik Glacier, across the face of Knik Glacier and along the north side of Knik Glacier to the Unit 6 boundary;

(ii) Unit 14(B) consists of that portion of Unit 14 north of Unit 14(A);

(iii) Unit 14(C) consists of that portion of Unit 14 south of Unit 14(A);

(15) Game Management Unit 15 consists of that portion of the Kenai Peninsula and adjacent islands draining into the Gulf of Alaska, Cook Inlet and Turnagain Arm from Gore Point to the point where longitude line 150° 00 W. crosses the coast line of Chickaloon Bay in Turnagain Arm, including that area lying west of longitude line

150° 00′ W. to the mouth of the Russian River, thence southerly along the Chugach National Forest boundary to the upper end of Upper Russian Lake; and including the drainages into Upper Russian Lake west of the Chugach National Forest boundary;

(i) Unit 15(A) consists of that portion of Unit 15 north of the Kenai River and Skilak Lake;

(ii) Unit 15(B) consists of that portion of Unit 15 south of the Kenai River and Skilak Lake, and north of the Kasilof River, Tustumena Lake, Glacier Creek, and Tustumena Glacier;

(iii) Unit 15(C) consists of the remainder of Unit 15;

(16) Game Management Unit 16 consists of the drainages into Cook Inlet between Redoubt Creek and the Susitna River, including Redoubt Creek drainage, Kalgin Island, and the drainages on the west side of the Susitna River (including the Susitna River) upstream to its junction with the Chulitna River; the drainages into the west side of the Chulitna River (including the Chulitna River) upstream to the Tokositna River, and drainages into the south side of the Tokositna River upstream to the base of the Tokositna Glacier, including the drainage of the Kanitula Glacier;

(i) Unit 16(A) consists of that portion of Unit 16 east of the east bank of the Yentna River from its mouth upstream to the Kahiltna River, east of the east bank of the Kahiltna River, and east of the Kahiltna Glacier;

(ii) Unit 16(B) consists of the remainder of Unit 16;

(17) Game Management Unit 17 consists of drainages into Bristol Bay and the Bering Sea between Etolin Point and Cape Newenham, and all islands between these points, including Hagemeister Island and the Walrus Islands;

(i) Unit 17(A) consists of the drainages between Cape Newenham and Cape Constantine, and Hagemeister Island and the Walrus Islands;

(ii) Unit 17(B) consists of the Nushagak River drainage upstream from and including the Mulchatna River drainage, and the Wood River drainage upstream from the outlet of Lake Beverley;

(iii) Unit 17(C) consists of the remainder of Unit 17;

(18) Game Management Unit 18 consists of that area draining into the Yukon and Kuskokwim Rivers downstream from a straight line drawn between Lower Kalskag and Paimiut and the drainages flowing into the Bering Sea from Cape Newenham on the south to and including the Pastolik River drainage on the north; Nunivak, St. Matthews, and adjacent islands between Cape Newenham and the Pastolik River;

(19) Game Management Unit 19 consists of the Kuskokwin River drainage upstream from Lower Kalskag;

(i) Unit 19(a) consists of the Kuskokwim River drainage downstream from and including the Moose Creek drainage on the north bank and downstream from and including the Stony River drainage on the south bank, excluding Unit 19(B);

(ii) Unit 19(B) consists of the Aniak River drainage upstream from and including the Salmon River drainage, the Holitna River drainage upstream from and including the Bakbuk Creek drainage, that area south of a line from the mouth of Bakbuk Creek to the radar dome at Sparrevohn Air Force Base, including the Hoholitna River drainage upstream from that line, and the Stony River drainage upstream from and including the Can Creek drainage;

(iii) Unit 19(C) consists of that portion of Unit 19 south and east of a line from Benchmark M#1.26 (approximately 1.26 miles south of the northwest corner of the original Mt. McKinley National Park boundary) to the peak of Lone Mountain, then due west to Big River, including the Big River drainage upstream from that line, and including the Swift River drainage upstream from and including the North Fork drainage;

(iv) Unit 19(D) consists of the remainder of Unit 19;

(20) Unit 20 consists of the Yukon River drainage upstream from and including the Tozitna River drainage to and including the Hamlin Creek drainage, drainages into the south bank of the Yukon River upstream from and including the Charley River drainage, the Ladue River and Fortymile River

drainages and the Tanana River drainage north of the Unit 13 and downstream from the east bank of the Robertson River;

(i) Unit 20(A) consists of that portion of Unit 20 bounded on the south by the Unit 13 boundary, bounded on the east by the west bank of the Delta River, bounded on the north by the north bank of the Tanana River from its confluence with the Delta River downstream to its confluence with the Nenana River, and bounded on the west by the east bank of the Nenana River;

(ii) Unit 20(B) consists of drainages into the north bank of the Tanana River from and including Hot Springs Slough upstream to and including the Banner Creek drainage;

(iii) Unit 20(C) consists of that portion of Unit 20 bounded on the east by the east bank of the Nenana River and on the north by the north bank of the Tanana River downstream from the Nenana River;

(iv) Unit 20(D) consists of that portion of Unit 20 bounded on the east by the east bank of the Robertson River and on the west by the west bank of the Delta River, and drainages into the north bank of the Tanana River from its confluence with the Robertson River downstream to, but excluding, the Banner Creek drainage;

(v) Unit 20(E) consists of drainages into the south bank of the Yukon River upstream from and including the Charley River drainage, and the Ladue River drainage;

(vi) Unit 20(F) consists of the remainder of Unit 20;

(21) Game Management Unit 21 consists of drainages into the Yukon River upstream from Paimiut to but not including the Tozitna River drainage on the north bank, and to but not including the Tanana River drainage on the south bank, and excluding the Koyukuk River drainage upstream from the Dulbi River drainage;

(i) Unit 21(A) consists of the Innoko River drainage upstream from and including the Iditarod River drainage, and the Nowitna River drainage upstream from the Little Mud River;

(ii) Unit 21(B) consists of the Yukon River drainage upstream from Ruby and east of the Ruby-Poorman Road, downstream from and excluding the Tozitna River and Tanana River drainages, and excluding the Nowitna River drainage upstream from the Little Mud River, and excluding the Melozitna River drainage upstream from Grayling Creek;

(iii) Unit 21(C) consists of the Melozitna River drainage upstream from Grayling Creek, and the Dulbi River drainage upstream from and including the Cottonwood Creek drainage;

(iv) Unit 21(D) consists of the Yukon River drainage from and including the Blackburn Creek drainage upstream to Ruby, including the area west of the Ruby-Poorman Road, excluding the Koyukuk River drainage upstream from the Dulbi River drainage, and excluding the Dulbi River drainage upstream from Cottonwood Creek;

(v) Unit 21(E) consists of the Yukon River drainage from Paimiut upstream to but not including the Blackburn Creek drainage, and the Innoko River drainage downstream from the Iditarod River drainage;

(22) Game Management Unit 22 consists of Bering Sea, Norton Sound, Bering Strait, Chukchi Sea, and Kotzebue Sound drainages from, but excluding, the Pastolik River drainage in southern Norton Sound to, but not including, the Goodhope River drainage in Southern Kotzebue Sound, and all adjacent islands in the Bering Sea between the mouths of the Goodhope and Pastolik Rivers;

(i) Unit 22(A) consists of Norton Sound drainages from, but excluding, the Pastolik River drainage to, and including, the Ungalik River drainage, and Stuart and Besboro Islands;

(ii) Unit 22(B) consists of Norton Sound drainages from, but excluding, the Ungalik River drainage to, and including, the Topkok Creek drainage;

(iii) Unit 22(C) consists of Norton Sound and Bering Sea drainages from, but excluding, the Topkok Creek drainage to, and including, the Tisuk River drainage, and King and Sledge Islands;

(iv) Unit 22(D) consists of that portion of Unit 22 draining into the Bering Sea north of but not including the Tisuk River to and including Cape York, and St. Lawrence Island;

(v) Unit 22(E) consists of Bering Sea, Bering Strait, Chukchi Sea, and Kotzebue Sound drainages from Cape York to, but excluding, the Goodhope River drainage, and including Little Diomede Island and Fairway Rock;

(23) Game Management Unit 23 consists of Kotzebue Sound, Chukchi Sea, and Arctic Ocean drainages from and including the Goodhope River drainage to Cape Lisburne;

(24) Game Management Unit 24 consists of the Koyukuk River drainage upstream from but not including the Dulbi River drainage;

(25) Game Management Unit 25 consists of the Yukon River drainage upstream from but not including the Hamlin Creek drainage, and excluding drainages into the south bank of the Yukon River upstream from the Charley River;

(i) Unit 25(A) consists of the Hodzana River drainage upstream from the Narrows, the Chandalar River drainage upstream from and including the East Fork drainage, the Christian River drainage upstream from Christian, the Sheenjek River drainage upstream from and including the Thluichohnjek Creek, the Coleen River drainage, and the Old Crow River drainage;

(ii) Unit 25(B) consists of Little Black River drainage upstream from but not including the Big Creek drainage, the Black River drainage upstream from and including the Salmon Fork drainage, the Porcupine River drainage upstream from the confluence of the Coleen and Porcupine Rivers, and drainage into the north bank of the Yukon River upstream from Circle, including the islands in the Yukon River;

(iii) Unit 25(C) consists of drainages into the south bank of the Yukon River upstream from Circle to the Subunit 20(E) boundary, the Birch Creek drainage upstream from the Steese Highway bridge (milepost 147), the Preacher Creek drainage upstream from and including the Rock Creek drainage, and the Beaver Creek drainage upstream from and including the Moose Creek drainage;

(iv) Unit 25(D) consists of the remainder of Unit 25;

(26) Game Management Unit 26 consists of Arctic Ocean drainages between Cape Lisburne and the Alaska-Canada border, including the Firth River drainage within Alaska;

(i) Unit 26(A) consists of that portion of Unit 26 lying west of the Itkillik River drainage, and west of the east bank of the Colville River between the mouth of the Itkillik River and the Arctic Ocean;

(ii) Unit 26(B) consists of that portion of Unit 26 east of Unit 26(A), west of the west bank of the Canning River and west of the west bank of the Marsh Fork of the Canning River;

(iii) Unit 26(C) consists of the remainder of Unit 26.

(t) Public lands within the following areas are closed to subsistence take or subsistence take is restricted as specified.

(1) Unit 1(A). (i) In the Ketchikan area, a strip one-fourth mile wide on each side of the Tongass Highway system, including the Ward, Connel, and Harriet Hunt Lake Roads, is closed to the taking of big game;

(ii) in the Hyder area, the Salmon River drainage downstream from the Riverside Mine, excluding the Thumb Creek drainage, is closed to the taking of bears;

(2) Unit 1(B). The Anan Creek drainage is closed to the taking of black bears;

(3) Unit 1(C). (i) Unit 1(C) is closed to the taking of snow geese;

(ii) in the Juneau area, that area between the coast and a line one-fourth mile inland of the following road systems is closed to the taking of big game: Glacier Highway from Mile 0 to Mile 24 at Peterson Creek, Douglas Highway from the Douglas city limits to Milepost 7 on the North Douglas Highway, Mendenhall Loop Road, and Thane Road;

(iii) the area within one-fourth mile of Mendenhall Lake, the U.S. Forest Service Mendenhall Glacier Visitor's Center, and the Center's parking area, is closed to hunting;

(iv) the area of Mt. Bullard bounded by the Mendenhall Glacier, Nugget Creek from its mouth to its confluence with Goat Creek, and a line from the mouth of Goat Creek north to the

Mendenhall Glacier, is closed to the taking of mountain goat;

(v) Auke Lake is closed to the taking of waterfowl;

(vi) Mt. Juneau drainage, bounded by the Glacier Highway, Salmon Creek and its reservoir, a line from the head of the Salmon Creek drainage to the head of Granite Creek, and down Granite Creek and Gold Creek to the Glacier Highway, is closed to the taking of mountain goat;

(4) Unit 1(D). A strip one-fourth mile wide on each side of the Lutak Road between Mile 7 and Chilkoot Lake, and from the Chilkoot River bridge to the end of the Lutak Road spur at the head of Lutak Inlet, is closed to the taking of big game;

(5) Unit 3. (i) A strip one-fourth mile wide on each side of the Stikine (Zimovia) Highway from the Wrangell city limits to Milepost 9 is closed to the taking of big game;

(ii) in the Petersburg vicinity, a strip one-fourth mile wide on each side of the Mitkof Highway from Milepost 0 to the Crystal Lake campground is closed to the taking of big game, except wolves;

(iii) the Petersburg Creek drainage on Kupreanof Island is closed to the taking of black bears;

(iv) Blind Slough, draining into Wrangell Narrows, and a strip one-fourth mile wide on each side of Blind Slough, from the hunting closure markers at the southernmost portion of Blind Island to the hunting closure markers one mile south of the Blind Slough bridge, are closed to all hunting; the remainder of Blind Slough and its drainage is closed to the taking of snow geese only;

(6) Unit 4. (i) In the Sitka area, a strip one-fourth mile wide on each side of all State highways is closed to the taking of big game;

(ii) the Seymour Canal Closed Area (Admiralty Island), including all drainages into northwestern Seymour Canal between Staunch Point and the southernmost tip of the unnamed peninsula separating Swan Cove and King Salmon Bay, and including Swan and Windfall Islands, is closed to the taking of bears;

(iii) the Salt Lake Bay Closed Area (Admiralty Island), including all lands within one-fourth mile of Salt Lake above Klutchman Rock at the head of Mitchell Bay, is closed to the taking of bears;

(iv) Port Althorp (Chichagof Island), that area within the Port Althorp watershed south of a line from Point Lucan to Salt Chuck Point (Trap Rock), is closed to the taking of brown bears;

(v) Northeast Chichagof Controlled Use Area, consisting of that portion of Unit 4 on Chichagof Island north of Tenakee Inlet and east of Port Frederick, is closed to the use of any motorized land vehicle for brown bear hunting;

(7) Unit 6. (i) the Goat Mountain goat observation area, which consists of that portion of Unit 6 bounded on the north by Miles Lake and Miles Glacier, on the south and east by Pleasant Valley River and Pleasant Glacier, and on the west by the Copper River, is closed to the taking of mountain goat;

(ii) the Heney Range goat observation area, which consists of that portion of Unit 6(C) south of the Copper River Highway and west of the Eyak River, is closed to the taking of mountain goat;

(8) Unit 7. (i) the Portage Glacier Closed Area in Unit 7, which consists of Portage Creek drainages between the Anchorage-Seward Railroad and Placer Creek in Bear Valley, Portage Lake, the mouth of Byron Creek, Glacier Creek and Byron Glacier, is closed to hunting; however, migratory birds and small game may be hunted with shotguns after September 1;

(ii) the Exit Glacier Closed Area in Unit 7, which consists of the south side drainages of the Resurrection River downstream from the mouth of Redman Creek, and Resurrection Bay drainages between the mouth of the Resurrection River and the mouth of Lowell Creek, is closed to the taking of big game;

(iii) the Cooper Landing Closed Area, which consists of that portion of Units 7 and 15 bounded by a line from the junction of the Sterling Highway and the Chugach National Forest boundary, then along the national forest boundary to Thurman Creek, then southeasterly along Thurman

Creek and the northeast side of Trout Lake, then to the confluence of Juneau Creek and Falls Creek, then easterly along Falls Creek and the North Fork of Falls Creek and over the connecting saddle to Devils Creek, then southeasterly along Devils Creek to its confluence with Quartz Creek, then southwesterly along Quartz Creek to the Sterling Highway and then to the point of beginning, is closed to the taking of Dall sheep and mountain goat;

(iv) the Resurrection Creek Closed Area, which consists of the drainage of Resurrection Creek downstream from Rimrock and Highland Creeks, including Palmer Creek, is closed to the taking of moose;

(9) Unit 9. (i) In Unit 9 in the McNeil River State Game Sanctuary, the McNeil River drainage, Mikfik Creek drainage, and all drainages into McNeil Cove from Akjemguiga Cove to McNeil Head, are closed to hunting, and the remainder of the McNeil River State Game Sanctuary and contiguous tidelands are closed to brown bear hunting; access to the sanctuary is by permit only issued by the State of Alaska;

(ii) Unit 9(E) is closed to the taking of Canada geese;

(iii) that portion of Unit 9 extending south and east of McNeil River State Game Sanctuary to the boundary of Katmai National Park and Preserve, and including any State land within the boundaries of Katmai National Park and Preserve, is closed to brown bear hunting;

(10) Unit 10. (i) Unit 10, except Unimak Island, is closed to the taking of Canada geese; and

(ii) Otter Island in the Pribilof Islands is closed to hunting;

(11) Units 12, 13, and 20. (i) The Tok Management Area:

(A) the area consists of those portions of Units 12, 13(C), and 20(D) bounded by a line along the Alaska Highway east from the east side of the Johnson River bridge to Tok Junction, then south along the Tok-Slana cutoff (Glenn Highway) to the Slana River, then west along the north bank of the Slana River to its confluence with Lost Creek, then up the north side of Lost Creek to the divide between Lost Creek and Jack Creek, then north to the Unit 12 boundary, then west along the Unit 12 boundary to Mount Kimball (63° 17′ N. lat., 144° 40′ W. long.), then west in a straight line to Mount Gakona (63° 17′ N. lat., 145°12′ W. long.), then northerly along the east bank of the Johnson Glacier and Johnson River to the Johnson River bridge;

(B) the area is open to sheep hunting by permit only;

(ii) [Reserved]

(12) Units 13 and 20. (i) Delta Controlled Use Area:

(A) The area consists of the drainages of the Tanana River south of the Alaska Highway, from the west bank of the Johnson River to and including drainages of the Delta River north of north bank of Miller Creek and Canwell Glacier in Units 13(B), 20(A), and 20(D);

(B) The area is closed to the use of any motorized vehicle or pack animal for hunting, from August 5 through August 25; however, this does not prohibit motorized access to the area for hunting, or transportation of game on the Richardson Highway;

(ii) [Reserved]

(13) Unit 13. (i) The Paxson Closed Area in Unit 13(B), which consists of the eastern drainage of the Gulkana River lying west of the Richardson Highway and the western drainage of the Gulkana River between the Denali Highway and the north end of Paxson Lake where the Gulkana River enters Paxson Lake, is closed to the taking of big game;

(ii) The Sheep Mountain Closed Area which lies along the Glenn Highway in Unit 13(A) and is bounded by a line from Caribou Creek, Milepost 107 Glenn Highway, then easterly along the Glenn Highway to Milepost 123, then north to Squaw Creek, then downstream to Caribou Creek, then down Caribou Creek to the point of beginning, is closed to the taking of moutain goat and Dall sheep;

(iii) The Sourdough Controlled Use Area:

(A) The area consists of that portion of Unit 13(B) bounded by a line beginning at the confluence of Sourdough Creek and the Gulkana River, then northerly along Sourdough Creek to the Richardson Highway at approximately Mile 148, then northerly along the Richardson Highway to the Meiers Creek Trail at approximately Mile 170, then westerly along the trail to the Gulkana River, then southerly along the east bank of the Gulkana River to its confluence with Sourdough Creek, the point of beginning;

(B) The area is closed to the use of any motorized vehicle for hunting; however, this does not prohibit motorized access or transportation of game on the Richardson Highway, Sourdough and Haggard Creeks, Meiers Lake trails, or other trails designated by the Alaska Department of Fish and Game;

(iv) The Clearwater Creek Controlled Use Area:

(A) The area consists of that portion of Unit 13(B) north of the Denali Highway, west of and including the MacLaren River drainage, east of and including the eastern bank drainage of the Middle Fork of the Susitna River downstream from and including the Susitna Glacier, and the eastern bank drainages of the Susitna River downstream from its confluence with the Middle Fork;

(B) The area is closed to the use of any motorized vehicle for hunting; however, this does not prohibit motorized access, or transportation of game, on the Denali Highway;

(v) The Tonsina Controlled Use Area:

(A) The area consists of that portion of Unit 13(D) bounded on the west by the Richardson Highway from the Tiekel River to the Tonsina River at Tonsina, on the north along the south bank of the Tonsina River to where the Edgerton Highway crosses the Tonsina River, then along the Edgerton Highway to Chitina, on the east by the Copper River from Chitina to the Tiekel River, and on the south by the north bank of the Tiekel River;

(B) The area is closed to the use of any motorized vehicle or pack animal for hunting, from August 5 to September 30;

(14) Unit 14. (i) The Fort Richardson Management Area, consisting of the Fort Richardson Military Reservation, is open to the taking of big game by permit only;

(ii) The Eagle River Management Area, consisting of the Eagle River drainage upsteam from the Glenn Highway in Unit 14(C) is closed to hunting, except sheep hunting by permit;

(iii) The Anchorage Management Area:

(A) The area consists of all Cook Inlet drainages south of the Elmendorf and Fort Richardson military reservations and north of and including Rainbow Creek, but excluding the Anchorage Coastal Wildlife Refuge;

(B) The Anchorage Management Area is closed to hunting, except that:

(*1*) Moose hunting is allowed by State of Alaska permit only;

(*2*) Small game and waterfowl may be taken by falconry, except that waterfowl may not be taken in the Ship Creek drainage west of Post Road;

(iv) The Eklutna Lake Management Area:

(A) The area consists of the drainages of Eklutna River and Eklutna Lake in Unit 14(C) upstream from the Glenn Highway, excluding those drainages flowing into the East Fork of Eklutna River upstream from the bridge above the Lake and Thunderbird Creek;

(B) The area is closed to hunting, except that—

(*1*) Small game may be taken by bow and arrow only, from the day after Labor Day through April 30;

(*2*) Moose hunting is allowed by permit with bow and arrow only;

(*3*) Black bear may be taken by bow and arrow only, from the day after Labor Day to May 20, for one bear only;

(*4*) Sheep may be taken by permit, and by bow and arrow only, from the day after Labor Day through September 30;

(v) The Chugach State Park Management Area:

(A) The area consists of that portion of Chugach State Park outside of the Eagle River, Anchorage, and Eklutna Management Areas;

(B) The area is open to hunting under regulations governing Unit 14(C), except as follows:

(*1*) Black bear hunting is open from the day after Labor Day through May 20 for 1 bear only;

(*2*) No hunting is allowed for brown bear, mountain goat, squirrel, wolf, woverine, coyote and unclassified game;

(vi) The Peters Creek Management Area:

(A) The area consists of all lands bounded on the south and west by Eagle River and the Fort Richardson Military Reservation, on the east by the old Glen Highway, and on the north by Peters Creek;

(B) The area is closed to hunting except that:

(*1*) Small game may be taken by shotgun or bow and arrow only, north and west of the Alaska Railroad;

(*2*) Moose hunting is allowed by drawing permit, by bow and arrow only;

(15) Unit 15. (i) The Moose River Closed Area near Sterling in Unit 15(A), which consists of the area on and within one-quarter mile of the Moose River between the Kenai National Moose Range boundary and the Sterling Highway, is closed to the taking of waterfowl;

(ii) The Kenai Controlled Use Area, consisting of that portion of Unit 15(A) north of the Sterling Highway, is closed during moose-hunting season to the use of aircraft for hunting moose, including transportation of a moose hunter or moose part; however, this does not apply after 12:01 a.m., September 11, and does not apply to transportation of a moose hunter or moose part by aircraft to or from a publicly owned airport in the controlled use area;

(iii) The Lower Kenai Controlled Use Area, consisting of Unit 15(C), is closed to the use of any motorized vehicle except an aircraft or boat for hunting moose from September 11 through September 20, including transporation of a moose hunter or moose part; however this does not apply to a motorized vehicle on a state- or borough-maintained highway;

(vi) The Skilak Loop Management Area:

(A) The area consists of that portion of Unit 15(A) bounded by a line beginning at the easternmost junction of the Sterling Highway and the Skilak Loop (milepost 76.3), then due south to the south bank of the Kenai River, then southerly along the south bank of the Kenai River to its confluence with Skilak Lake, then westerly along the north shore of Skilak Lake to Lower Skilak Lake Campground, then northerly along the Lower Skilak Lake Campground Road and the Skilak Loop Road to its westermost junction with the Sterling Highway, then easterly along the Sterling Highway to the point of beginning;

(B) The area is closed to hunting and trapping except that small game may be taken only from October 1 through March 1 by bow and arrow only, and anterless moose may be taken by permit only;

(16) Unit 17. (i) All islands and adjacent waters within one-half mile of each island in the Walrus Islands State Game Sancturay, as described in Alaska Statute 16.20.110, except for those islands known as the Twins and their adjacent waters are closed to hunting;

(ii) The Upper Mulchatna Controlled Use Area:

(A) The area consists of Unit 17 (B);

(B) The area is closed to the use of any motorized vehicle, except aircraft and boats and in legally permitted hunting camps, for hunting big game from August 1 to November 1, including transportation of big game hunters and parts of big game.

(17) Unit 18—the Kalskag Controlled Use Area. (i) The area consists of that portion of Unit 18 bounded by a line from Lower Kalskag on the Kuskokwim River, north-westerly to Russian Mission on the Kuskokwim River, north-westerly to Russian Mission on the Yukon River, then east along the north bank of the Yukon River, then east along the north bank of the Yukon River to the old site of Paimiut, then back to Lower Kalskag;

(ii) This area is closed to the use of aircraft for hunting big game, including transportation of any big game hunter and big game part; however, this does not apply to transportation of a big game hunter or big game part by aircraft to or from a publicly owned airport in the controlled use area;

(18) Unit 19—the Upper Kuskokwim Controlled Use Area. (i) The area consists of that portion of Unit 19(D) upstream from the mouth of Big River

including the drainages of the Big River, Middle Fork, South Fork, East Fork, and Tonzona River, and bounded by a line following the west bank of the Swift Fork (McKinley Fork) of the Kuskokwim River to 152°50′ W. long., then north to the boundary of Denali National Preserve, then following the western boundary of Denali National Preserve north to its intersection with the Minchumina-Telida winter trail, then west to the crest of Telida Mountain, then north along the crest of Munsatli Ridge to elevation 1,610, then northwest to Dyckman Mountain and following the crest of the divide between the Kuskokwim River and the Nowitna drainage, and the divide between the Kuskokwim River and the Nixon Fork River to Loaf bench mark on Halfway Mountain, then south to the west side of Big River drainage, the point of beginning;

(ii) The area is closed during moose-hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft to or from a publicly owned airport in the controlled use area;

(19) Units 20, 24, 25, and 26—the Dalton Highway Corridor Management Area, consisting of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to the Prudhoe Bay Closed Area, is closed to hunting; however, big game and small game may be taken in the area by bow and arrow only; no motorized vehicle, except aircraft, boats, and licensed highway vehicles, may be used to transport game or hunters within the Dalton Highway Corridor Management Area;

(20) Unit 20. (i) Birch Lake and the area within one-half mile of Birch Lake (Mile 56 Richardson Highway) is closed to the taking of big game;

(ii) Harding Lake and the area within one-half mile of Harding Lake (Mile 44 Richardson Highway) is closed to the taking of big game;

(iii) Lost Lake and the area within one-half mile of Lost Lake (Mile 56 Richardson Highway) is closed to the taking of big game with firearms and crossbows;

(iv) The Delta Junction Closed Area (Unit 20(D) near Delta Junction), which consists of that portion of Unit 20(D) bounded by a line beginning at the confluence of Donnelly Creek and the Delta River, then up Donnelly Creek to the Richardson Highway (Mile 238), then north along the east side of the highway to the coal mine road (Mile 242), then east along the south side of the coal mine road to the junction with the trail to Jarvis Creek, then down the east bank of Jarvis Creek to the 33-Mile Loop Road crossing (Mile 12), to the "12 mile crossing trail" (Mile 246.9), then east along the south side of the "12 mile crossing trail" and across Jarvis Creek to the 33-mile loop then northeast along the 33-Mile Loop Road to the intersection with the Alaska Highway (Mile 1414), then southeast along the north side of the Alaska Highway to the bridge at Sawmill Creek (Mile 1403.9), then down the west bank of Sawmill Creek to its confluence with Clearwater Creek and down the south bank of Clearwater Creek to its confluence with the Tanana River, then down the Tanana River to its confluence with the Delta River, and upstream along the east bank of the Delta River to the point of beginning at Donnelly Creek, is closed to the taking of moose;

(v) The Glacier Mountain Controlled Use Area:

(A) The area consists of that portion of Unit 20(E) bounded by a line beginning at Mile 140 of the Taylor Highway, then north along the highway to Eagle, then west along the cat trail from Eagle to Crooked Creek, then from Crooked Creek southwest along the west bank of Mogul Creek to its headwaters on North Peak, then west across North Peak to the headwaters of Independence Creek, then southwest along the west bank of Independence Creek to its confluence with the North Fork of the Fortymile River, then easterly along the south bank of the North Fork of the Fortymile River to its confluence with Champion Creek, then across the North Fork of the Fortymile River to the south bank of Champion Creek and easterly along the south bank of Champion Creek to its confluence with Little Champion Creek, then northeast along the east bank of Little Champion Creek to its headwaters, then northeasterly in a direct line to Mile 140 on the Taylor Highway;

(B) The area is closed to the use of any motorized vehicle for hunting, from August 5 to September 20; however, this does not prohibit motorized access via, or transportation of game on, the Taylor Highway or any airport;

(vi) The Wood River Controlled Use Area:

(A) The area consists of that portion of Unit 20(A) bounded on the north by the south side of the Rex Trail beginning at its intersection with the Totatlanika River then easterly along the Rex Trail to Gold King airstrip, then from Gold King airstrip along the trail's extension along the north side of Japan Hills to the Wood River; on the east by the Wood River, including the Wood River drainage upstream from and including the Snow Mountain Gulch Creek drainage; on the south side by the divide separating the Yanert River drainage from the drainages of Healy Creek, Moody Creek, Montana Creek and the Wood River; and on the west by the east bank of the Nenana River from the divide separating the drainage of the Yanert River and Montana Creek north to Healy Creek, then easterly along the south bank of Healy Creek to the north fork of Healy Creek, then along the north fork of Healy Creek to its headwaters, then along a straight line to the headwaters of Dexter Creek, then along Dexter Creek to the Totatlanika River, and then down the east bank of the Totatlanika River to the Rex Trail;

(B) The area is closed to the use of any motorized vehicle except aircraft for big game hunting and transportation of any big game part, from August 1 through September 30;

(vii) The Macomb Plateau Controlled Use Area, consisting of that portion of Unit 20(D) south of the Alaska Highway, draining into the south side of the Tanana River between the east bank of the Johnson River upstream to Prospect Creek, and the east bank of Bear Creek (Mile 1357.3), is closed to the use of any motorized vehicle, except a floatplane on Fish Lake, for hunting or transportation of any game part, from August 10 though September 30;

(viii) The Yanert Controlled Use Area, consisting of that portion of Unit 20(A) drained by the Nenana River upstream from and including the Yanert Fork drainage, is closed to the use of any motorized vehicle, except aircraft, for big game hunting and transportation of any big game part; however, this does not prohibit motorized access via, and transportation of game on, the Parks Highway;

(ix) The Minto Flats Management Area:

(A) The area consists of that portion of Unit 20 bounded by the Elliot Highway beginning at Mile 118, then northeasterly to Mile 96, then east to the Tolovana Hotsprings Dome, then east to the Winter Cat Trail, then along the Cat Trail south to the Old Telegraph Trail at Dunbar, then westerly along the trail to a point where it joins the Tanana River three miles above Old Minto, then along the north bank of the Tanana River (including all channels and sloughs except Swan Neck Slough), to the confluence of the Tanana and Tolovana Rivers and then northerly to the point of beginning;

(B) The area is open to moose hunting by permit only;

(x) The Fairbanks Management Area consists of the Goldstream subdivision (SE1/4 SE1/4 Section 28 and Section 33, Township 2 North, Range 1 West, and Fairbanks Meridian) and that portion of Unit 20(B) bounded by a line from the confluence of Rosie Creek and the Tanana River, northerly along Rosie Creek to the divide between Rosie Creek and Cripple Creek, then down Cripple Creek to its confluence with Ester Creek, then up Ester Creek to its confluence with Ready Bullion Creek, then up Ready Bullion Creek to the summit of Ester Dome, then down Sheep Creek to its confluence with Goldstream Creek, then easterly along Goldstream Creek to its confluence with First Chance Creek, then up First Chance Creek to Tungsten Hill, then southerly along Steele Creek to its intersection with the Trans-Alaska Pipeline, then southerly along the pipeline right-of-way to the Chena River, then along the north bank of the Chena River to the Moose Creek dike, then southerly along Moose Creek dike to its intersection with the Tanana River, and then westerly along the north bank of the Tanana River to the point of beginning;

(xi) The Ferry Trail Management Area:

(A) The area consists of that portion of Unit 20(A) bounded on the north by the Rex Trail; on the west by the east bank of the Nenana River from its intersection with the Rex Trail south to the divide forming the north boundary of the Lignite Creek drainage; on the south by that divide easterly and southerly to the headwaters of Sanderson Creek at Usibelli Peak, then along a southwesterly line to the confluence of Healy Creek and Coal Creek, then upstream along the south bank of Healy Creek to the north fork of Healy Creek, then along the north fork of Healy Creek to its headwaters; on the east by a straight line from the headwaters of Healy Creek to the headwaters of Dexter Creek, then along Dexter Creek to the Totatlanika River, then down the east bank of the Totatlanika River to the Rex Trail;

(B) The area is open to caribou hunting by permit only.

(xii) The Healy-Lignite Management Area:

(A) The Area consists of that portion of Unit 20 (A) that includes the entire Lignite Creek drainage, and that portion of the Nenana River drainage south of the Lignite Creek drainage and north of a boundary beginning at the confluence of the Nenana River and Healy Creek, then easterly along the south bank of Healy Creek to its confluence with Coal Creek, then northeasterly to the headwaters of Sanderson Creek at Usibelli Peak;

(B) The area is open to hunting by bow and arrow only.

(21) Units 21 and 24—the Koyukuk Controlled Use Area. (i) The area consists of those portions of Units 21 and 24 bounded by a line from the north bank of the Yukon River at Koyukuk, then northerly to the confluences of the Honhosa and Kateel Rivers, then north-easterly to the confluences of Billy Hawk Creek and the Huslia River (65°N. lat., 157°41' W. long.), then easterly to the south end of Solsmunket Lake, then east to Hughes, then south to Little Indian River, then southwesterly to the crest of Hochandochtla Mountain, then southwest to the mouth of Cottonwood Creek then southwest to Bishop Rock, then westerly along the north bank of the Yukon River (including Koyukuk Island) to the point of beginning;

(ii) the area is closed during moose hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft to or from a publicly owned airport in the controlled use area; all hunters on the Koyukuk River passing the Department of Fish and Game operated check station at Ella's Cabin (15 miles upstream from the Yukon on the Koyukuk River) are required to stop and report to department personnel at the check station;

(22) Unit 21—Paradise Controlled Use Area. (i) The area consists of that portion of Unit 21 bounded by a line beginning at the old village of Paimiut, then north along the west bank of the Yukon River to Paradise, then northwest to the mouth of Stanstrom Creek on the Bonasila River, then northeast to the mouth of the Anvik River, then along the west bank of the Yukon River to the lower end of Eagle Island (approximately 45 miles north of Grayling), then to the mouth of the Iditarod River, then down the east bank of the Innoko River to its confluence with Paimiut Slough, then south along the east bank of Paimiut Slough to its mouth, and then to the old village of Paimiut;

(ii) The area is closed during moose hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or part of moose; however, this does not apply to transportation of a moose hunter or part of moose by aircraft to or from a publicly owned airport in the controlled use area;

(23) Unit 23—The Noatak Controlled Use Area, consisting of that portion of

Unit 23 in a corridor extending five miles on either side of the Noatak River beginning at the mouth of the Kugururok River, and extending easterly along the Noatak River to the mouth of Sapun Creek, is closed for the period August 20–September 20 to the use of aircraft in any manner for big game hunting, including transportation of big game hunters or game.

(24) Unit 24—The Kanuti Controlled Use Area, consisting of that portion of Unit 24 bounded by a line from the Bettles Field VOR to the east side of Fish Creek Lake, to Old Dummy Lake, to the south end of Lake Todatonten (including all waters of these lakes), to the northernmost headwaters of Siruk Creek, to the highest peak of Double Point Mountain, then back to the Bettles Field VOR, closed during moose-hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft to or from a publicly owned airport in the controlled use area;

(25) Unit 26—The Prudhoe Bay Closed Area is closed to the taking of big game; this closed area consists of the area bounded by a line beginning at 70° 22′ N. lat., 148° W. long., then running south approximately 14 miles to a point at 70° 10′ N. lat., 148° W. long, then west approximately 15 miles to a point at 70° 10′ N. lat., 148° 40′ W. long., then north approximately two miles to a point at 70° 12′ N. lat., 148° 40′ W. long., then west approximately eight miles to a point at 70° 12′ N. lat., 148° 56′ W. long., then north approximately two miles to a point at 70° 15′ N. lat., 148° 56′ W. long., then west approximately 12 miles to a point at 70° 15′ N. lat., 149° 28′ W. long., then north approximately 12 miles to a point at 70° 26′ N. lat., 149° 28′ W. long., then east approximately 14 miles to a point at 70° 26′ N. lat., 148° 52′ W. long., then south approximately 2 miles to a point at 70° 24′ N. lat., 148° 52′ W. long., then east approximately 16 miles to a point at 70° 24′ N. lat., 148° 11′ W. long., then south approximately 2 miles to a point at 70° 24′ N. lat., 148° 11′ W. long., then east approximately 6 miles to the point of beginning.

(u) The following areas are closed to the trapping of furbearers for subsistence as indicated:

(1) Unit 1(C) (Juneau area):

(i) A strip within one-quarter mile of the mainland coast between the end of Thane Road and the end of Glacier Highway at Echo Cove;

(ii) Auke Lake and the area within one-quarter mile of Auke Lake;

(iii) That area of the Mendenhall Valley bounded on the south by the Glacier Highway, on the west by the Mendenhall Loop Road and Montana Creek Road and Spur Road to Mendenhall Lake, on the north by Mendenhall Lake, and on the east by the Mendenhall Loop Road and Forest Service Glacier Spur Road to the Forest Service Visitor Center;

(iv) A strip within one-quarter mile of the Douglas Island coast along the entire length of the Douglas Highway and a strip within one-quarter mile of the Eaglecrest Road;

(v) That area within the U.S. Forest Service Mendenhall Glacier Recreation Area;

(vi) A strip within one-quarter mile of the following trails as designated on U.S. Geological Survey maps: Herbert Glacier Trail, Windfall Lake Trail, Peterson Lake Trail, Spaulding Meadows Trail (including the loop trail), Nugget Creek Trail, Outer Point Trail, Dan Moller Trail, Perseverance Trail, Granite Creek Trail, Mt. Roberts Trail and the Nelson Water Supply Trail, Sheep Creek Trail, and Point Bishop Trail;

(vii) The area described as the Mendenhall Wetlands State Game Refuge in Alaska Statute 16.20.034 is closed to trapping; the use of off-road or all-terrain vehicles, motorcycles, or other motorized vehicles (except boats) within the boundaries of Mendenhall Wetlands State Game Refuge is prohibited at all times;

(2) Unit 9: The drainages of McNeil River, Mikfik Creek and all other drainages into McNeil Cove which extends from Akjemguiga Cove on the north to McNeil Head on the south, located at the head of Kamishak Bay, in the lower Cook Inlet are closed to trapping; access to the McNeil River

State Game Sanctuary is by permit only;

(3) Unit 14(C) (Anchorage Area):

(i) The drainages into Eklutna River and Eklutna Lake, excluding those drainages flowing into the East Fork of the Eklutna River, upstream from the bridge above the lake, within the Chugach State Park except Thunderbird Creek;

(ii) Eagle River and all drainages into Eagle River;

(iii) That portion of Chugach State Park outside of the Eagle River, Anchorage, and Eklutna Management areas is open to trapping under Unit 14(C) seasons and bag limits, except no trapping of wolf, wolverine, land otter, or beaver is allowed;

(iv) All land and water within the Anchorage Management Area as described in the preceding Subsection;

(v) In the Anchorage Coastal Wildlife Refuge in Unit 14(C), described in Alaska Statute 16.20.031: all land and water south and west of and adjacent to the toe of the bluff that extends from Point Woronzof southeasterly to Potter Creek;

(4) Unit 15. (i) Within the city limits of Homer (Unit 15) as those limits existed in November 1987;

(ii) The Skilak Loop Wildlife Management Area, consisting of that portion of Unit 15(A) bounded by a line beginning at the easternmost junction of the Sterling Highway and the Skilak Loop Road (milepost 58.0), then due south to the south bank of the Kenai River, then southerly along the south bank of the Kena River to its confluence with Skilak Lake, then westerly along the north shore of Skilak Lake to Lower Skilak Lake Campground, then northerly along the Lower Skilak Lake Campground Road and the Skilak Loop Road to its westernmost junction with the Sterling Highway, then easterly along the Sterling Highway to the point of beginning;

(iii) That portion of Unit 15(B) east of the Kenai River, Skilak Lake, Skilak River, and Skilak Glacier is closed to the trapping of marten;

(5) Unit 17: All islands within the Walrus Islands State Game Sanctuary as described in Alaska Statute 16.20.110 are closed to trapping.

(v) Regulations in this section govern only subsistence take of big game, small game, fur animals and unclassified game, and include season, area, and permit restrictions. Game may not be taken for subsistence except as specifically provided in this chapter.

BIG GAME ANIMALS

Units and bag limits	Subsistence open season
Black Bear—seasons and bag limits	
Units 1, 2, 3, and 5—2 bears, not more than 1 of which may be a blue or glacier bear	Sept. 1–June 30.
Unit 6—1 bear	Sept. 1–June 30.
Units 7, 9, 11–13, and 15–26—3 bears	No closed season.
Unit 14—1 bear	No closed season.
Brown Bear—season and bag limits	
Unit 1—1 bear by registration permit only	Sept. 15–Dec. 31, Mar. 15–May 31.
Units 2 and 3	No open season.
Unit 4, Chichagof Island south and west of a line that follows the crest of the island from Rock Point (58° N. lat., 136°21′ W. long.), to Rodgers Point (57°35′ N. lat., 135°33′ W. long.), including Yakobi and other adjacent islands; Baranof Island south and west of a line which follows the crest of the island from Nismeni Point (57°34′ N. lat., 135°25′ W. long.), to the entrance of Gut Bay (56°44′ N. lat., 134°38′ W. long.), including the drainages into Gut Bay and including Kruzof and other adjacent islands—1 bear by registration only.	Sept. 15–Dec. 31, Mar. 15–May 31.
Unit 4, that portion in the Northeast Chichagof Controlled Use Area—1 bear by registration permit only.	Mar. 15–May 20.
Remainder of Unit 4—1 bear by registration permit only	Sept. 15–Dec. 31, Mar. 15–May 20.
Unit 5—1 bear every four years	Sept. 1–May 31.
Units 6, 7, and 8	No open season.
Unit 9(B)—1 bear every four years	Oct. 1–Oct. 21 (odd years only) May 10–May 25 (even years only).

BIG GAME ANIMALS—Continued

Units and bag limits	Subsistence open season
Unit 9(E)—1 bear every four years	Oct. 7–Oct. 21 (odd years only) May 10–May 25 (even years only).
Remainder of Unit 9	No open season.
Units 10–16	No open season.
Units 17(A) and 17(C)—1 bear every four years	Sept. 10–Oct. 10, April 10–May 25.
Unit 17(B)—1 bear every four years	Sept. 20–Oct. 10, May 10–May 25.
Unit 18—Residents domiciled in Kwethluk: 1 bear every year. All others: 1 bear every 4 years.	Sept. 10–Oct. 10, Apr. 10–May 25.
Units 19(A), 19(D), and 21(A)—1 bear every four years	Sept. 1–Oct. 10, May 10–May 25.
Remainder of Unit 19	No open season.
Unit 20 except 20(E)—1 bear every four years	Sept. 1–Nov. 30, Apr. 1–May 31.
Unit 20(E)	No open season.
Unit 21(B), 21(C), 21(D), and 21(E)—1 bear every four years	Sept. 1–Dec. 31, Apr. 1–May 25.
Remainder of Unit 21	No open season.
Unit 22(A)—1 bear every four years	Sept. 1–Oct. 31, Apr. 15–May 25.
Unit 22(C)—1 bear every four years	Sept. 1–Oct. 31, May 10–May 25.
Remainder of Unit 22—1 bear every four years	Sept. 1–Oct. 31, Apr. 15–May 25.
Unit 23—1 bear every four years	Sept. 1–Oct. 10, Apr. 15–May 25.
Unit 24—That portion of the Koyukuk River drainage upstream from, and including the Alatna River drainage. Residents of Anaktuvuk Pass: 1 bear every year.	Sept. 1–Oct. 31, Apr. 1–May 31.
All other subsistence hunters: 1 bear every four years by registration permit	Sept. 1–Oct. 31, May 10–May 31.
Remainder of Unit 24—1 bear every four years	Sept. 1–Dec. 31, May 10–May 25.
Unit 25	No open season.
Unit 26(A), east of 159° W. long. Residents of Anaktuvuk Pass: 1 bear every year	Sept. 1–Oct. 31, Apr. 1–May 31.
Other subsistence hunters—1 bear every four years	Sept. 1–Oct. 31, May 10–May 31.
Unit 26(A), west of 159° W. long.—1 bear every four years	Sept. 1–Oct. 31, May 10–May 31.
Units 26(B) and (C)—1 bear every four years	Sept. 1–Oct. 31, May 10–May 31.
Caribou—seasons and bag limits	
Unit 7	No open season.
Unit 8—No limit	No closed season.
Units 9(A), 9(B), 9(C), 9(E), 17(B), and that portion of 17(C) east of the Nushagak River—4 caribou; however, no more than 2 caribou may be taken Aug. 10–Aug. 31 and no more than 1 caribou may be taken Sept. 1–Nov. 30.	Aug. 10–Mar. 31.
Unit 9(D) and Unit 10, Unimak Island only—1 bull	Sept. 1–May. 31.
Unit 10, Adak Island only 2 caribou by registration permit only	Sept. 1–Mar. 31.
Unit 10, Umnak Island only	No open season.
Remainder of Unit 10	No closed season.
Unit 11—1 caribou, by registration permit only	Aug. 10–Sept. 30.
Unit 12, residents of Tetlin and Northway only 1 anterless caribou by Federal registration permit only.	Open by announcement only.
Units 12 and 20(D) north of the south bank of the Tanana River downstream from the bridge at milepost 1303 Alaska Highway and north of the Alaska Highway from the bridge at milepost 1303 to the Canadian Border—1 caribou.	Aug. 10–Sept. 30, Dec. 1–Feb. 28.
Remainder of Unit 12—1 bull	Sept. 1–Sept. 20.
Units 13 and 14(B)—1 caribou by registration permit only. During the Jan. 1–Feb. 28 season, caribou may be taken in Unit 13 except for Unit 13(B) and except for that portion of Unit 13(A) within one-half mile of the Alaska Pipeline.	Aug. 10–Sept. 20, Jan. 1–Feb. 28.
Units 13 and 14(B)	Aug. 10–Sep. 20.
Residents of Units 11, 13 and 12 along the Nabesna Road—1 caribou by Federal registration permit only.	Jan. 5–Mar. 31.
Units 14(A) and 14(C), and remainder of Unit 15	No open season.
Unit 16—1 caribou	Aug. 10–Oct. 31.
Unit 17(A) and that portion of Unit 17(C) west of Nushagak River	No open season.
Unit 18 south of the Yukon River	No open season.
Remainder of Unit 18—1 caribou	Feb. 1–Mar. 31.
Unit 19—Residents domiciled in Lime Village only: Village bag limit of 100 caribou; cows and calves may not be taken from April 1–Aug. 9.	Feb. 1–Mar. 31, July 1–June 30.
Unit 19(A) north of Kuskokwim River—1 caribou	Aug. 10–Sept. 30, Nov. 1–Feb. 28.
Unit 19(A) south of the Kuskokwim River, and Unit 19(B) (excluding residents of Lime Village): 4 caribou; however, no more than 2 caribou may be taken Aug. 10–Aug. 31 and no more than 1 caribou may be taken Sept. 1–Nov. 30.	Aug. 10–Mar. 31.
Unit 19(C)—1 Caribou	Aug. 10–Oct. 10.
Unit 19(D) south and east of the Kuskokwim River and North Fork of the Kuskokwim River—1 caribou.	Aug. 10–Sept. 30, Nov. 1–Jan. 31.
Remainder of Unit 19(D)—1 Caribou	Aug. 10–Sept. 30.
Unit 20(C)	No open season.
Unit 20(D) south of the Tanana River—1 bull	Aug. 10–Sept. 30

BIG GAME ANIMALS—Continued

Units and bag limits	Subsistence open season
Unit 20(E), that portion drained by the Yukon River downstream from and including the Seventy-mile and Charley Rivers, the North Fork Fortymile River upstream from and including Independence Creek, the Middle Fork Fortymile River upstream from Fish Creek, and the Mosquito Fork Fortymile River upstream from and including Ketchumstruck Creek—1 caribou	Aug. 10–Sept. 30, Dec. 1.–Feb. 28.
Remainder of Unit 20(E) accessible by the Taylor Highway and associated trails—1 caribou by registration permit only	Aug. 10–Sept. 30, Dec. 1–Feb. 28.
Unit 20(F), except the Tozitna River drainage, south of the Yukon River and west of the Dalton Highway—1 bull	Aug. 10–Sept. 20.
Unite 20(F), Tozitna River drainage—1 caribou only bull caribou may be taken during the Aug. 10.–Sept. 30 season; caribou of either sex may be taken during the Mar. 1–Mar. 15 season.	Aug. 10–Sept. 30, Mar. 1–Mar. 15.
Remainder of Unit 20(F)—1 bull	Aug. 10–Sept. 30.
Unit 21, except Unit 21(D) west of the Yukon and Koyukuk Rivers—1 caribou	Aug. 10–Sept. 30.
Unit 21(D) west of the Yukon and Koyukuk Rivers, Units 22(A), 22(B), 23, and 26(A) (except the Nanushuk River drainage)—5 caribou per day; however, cow caribou may not be taken May 16–June 30.	July 1–June 30.
Units 22(C), 22(D), and 22(E)	No open season.
Unit 24, the Kanuti River drainage upstream from Kanuti, Chalatna Creek, the Fish Creek drainage (including Bonanza Creek), and that portion of Unit 25(D) drained by the west fork of the Dall River west of 150° W. long.—1 bull.	Aug. 10–Sept. 30.
Remainder of Unit 24—5 caribou per day; however, cow caribou may not be taken May 16–June 30.	July 1–June 30.
Units 25(A), 25(B), and the remainder of Unit 25(D)—10 caribou; however, no more than 5 caribou may be transported from these units per regulatory year.	July 1–Apr. 30.
The Nanushuk River drainage of Unit 26(A), and Unit 26 (B)—5 caribou; however, cow caribou may be taken only from Oct. 1–April 30.	July 1–Apr. 30.
Unit 26(C)—10 caribou; however, not more than 5 caribou may be transported from Unit 26(C) per regulatory year.	July 1–Apr.30.
Dall Sheep—seasons and bag limits	
Units 6 and 9, remainder of Unit 13, and Units 14(B), 16, 17, and 19—1 ram with ⅞ curl horn.	Aug. 10–Sept. 20.
Unit 11—1 sheep	Aug. 10–Sept. 20.
Unit 23: south and east of the Noatak River (excluding Gates of the Arctic National Park)—1 ram with ⅞ curl horn or larger; a registration permit is required.	Aug. 10–Sept. 20.
Unit 23 (Remainder)—1 sheep	Oct. 1–Apr. 30.
Units 25(A) and 26(C)—3 sheep, 1 ram with ⅞ curl horn or larger	Oct. 1–Apr. 30, Aug. 10–Sept. 20.
Remainder of Unit 25—1 ram with a full curl horn or larger	Aug. 10–Sept. 20.
Unit 24 and 26(A), those portions within the Gates of the Arctic National Park—3 sheep.	Aug. 1–Apr. 30.
Remainder of Units 24, 26(A), and 26(B), including the Gates of the Arctic National Preserve—1 ram with ⅞ curl horn or larger.	Aug. 10–Sept. 20.
All other units	No open season.
Deer—seasons and bag limits	
Unit 1(A) and 2—4 antlered deer	Aug. 1–Dec. 31.
Unit 1(B)—2 antlered deer	Aug. 1–Dec. 31.
Unit 1(C)—4 deer; however, antlerless deer may be taken only from Sept. 15–Dec. 31.	Aug. 1–Dec. 31.
Unit 3, that portion south of Sumner Strait and Decision Passage, including the Vank Island group, but not including Level, Conclusion, and Channel Islands—2 antlered deer.	Aug. 1–Nov. 30.
Remainder of Unit 3	No open season.
Unit 4, that portion of Chichagof Island east of Port Frederick and north of Tenakee Inlet, including all drainages into Tenakee Inlet and Port Frederick—6 deer; however, antlerless deer may be taken only from Sept. 15–Jan. 31.	Aug. 1–Jan. 31.
Remainder of Unit 4—6 deer; however, antlerless deer may be taken only from Sept. 15–Jan. 31.	Aug. 1–Jan. 31.
Unit 1(D) and 5	No open season.
Unit 6—5 deer; however, 2 antlered deer	Aug. 1–Dec. 31.
Remainder of Unit 3	No open season.
Unit 4, that portion of Chichagof Island east of Port Frederick and north of Tenakee Inlet, including all drainages into Tenakee Inlet and Port Frederick—6 deer; however, antlerless deer may be taken only from Sept. 15–Jan. 31.	Aug. 1–Jan. 31.
Remainder of Unit 4—6 deer; however, antlerless deer may be taken only from Sept. 15–Jan. 31.	Aug. 1–Jan. 31.
Unit 1(D) and 5	No open season.
it 6—5 deer; however, antlerless deer may be taken only from Sept. 15–Dec. 31	Aug. 1–Dec. 31.

BIG GAME ANIMALS—Continued

Units and bag limits	Subsistence open season
Unit 8, that portion of Kodiak Island north of the access road from Port Lions to Crescent Lake (57°52′ N. lat., 152°56′ W. long.), and east of a line from the outlet of Crescent Lake to Mount Ellison Peak and from Mount Ellison Peak to Pokati Point at Whale Passage, and that portion of Kodiak Island north of a line from Sequel Point to Pasagshak Pass, and north of the area draining into Ugak Bay east of a line from the mouth of Saltery Creek to Crag Point—1 deer; however, antlerless deer may be taken only from Oct. 1–Oct. 31.	Aug. 1–Oct. 31.
Unit 8, that portion of Kodiak Island east of a line from the mouth of Saltery Creek to Crag Point draining into Ugak Bay, and south of a line from Sequel Point to Pasagshak Pass—1 deer; however, antlerless deer may be taken only from Oct. 1–Oct. 31.	Aug. 1–Dec. 15.
Remainder of Unit 8—5 deer; however, antlerless deer may be taken only from Sept. 15–Jan. 7.	Aug. 1–Jan. 7.
Goat—seasons and bag limits	
Unit 1(A), Revillaggedo Island only	No open season.
Unit 1(B), that portion between Muddy River and LeConte Bay including the drainages into the North side of LeConte Bay— 1 goat by registration permit only; however, the taking of kids or nannies accompanied by kids is prohibited.	Aug. 1–Dec. 31.
Remainder of Unit 1(A) and Unit 1(B)—2 goats by registration permit only	Aug. 1–Dec. 31.
Unit 1(C), that portion draining into Lynn Canal and Stephens Passage between Antler River and Eagle Glacier and River—1 goat by registration permit only.	Oct. 1–Nov. 30.
Unit 1(C), that portion draining into Stephens Passage and Taku Inlet between Eagle Glacier and River and Taku Glacier, and all drainages of the Chilkat Range south of the Endicott drainage.	No open season.
Remainder of Unit 1(C)—1 goat by registration permit only	Aug. 1–Nov. 30
Unit 1(D), that portion lying between Taiya Inlet and River and the White Pass and Yukon Railroad.	No open season.
Unit 1(D), that portion lying north of the Katzehin River and northeast of the Haines Highway—1 goat by registration permit only	Sept. 15–Nov. 30
Remainder of Unit 1(D), and Units 4 and 5—1 goat by registration permit only	Aug. 1–Dec. 31.
Unit 6(D), that portion in the Tatitlek hunt area—1 goat by registration permit only	Aug. 1–Jan. 31
Unit 6(D) that portion in the Chenega Bay hunt area—1 goat by registration permit only.	Aug. 1–Jan. 31
Remainder of Unit 6—1 goat by registration permit only	Aug. 1–Jan. 31
Units 7 and 15(C), those portions in the Seldovia, Brown Mountain and Port Dick hunt subareas—1 goat by registration permit only.	Aug. 1–Oct. 31
Units 15(C), the English Bay hunt subarea—1 goat by registration permit only	Aug. 10–Oct. 31
Unit 12 and the remainder of Unit 13	No open season.
Moose—seasons and bag limits	
Unit 1(A), and Unit 1(B) south of LeConte Glacier—1 bull	Sept. 15–Oct. 15.
Remainder of Unit 1(C)-1 bull by registration permit only	Sept. 15–Oct. 15.
Unit 1(D)—1 bull by registration permit only	Sept. 1–Sept. 10.
Units 2, 3 (except Wrangell Island), and 4	No open season.
Unit 3, Wrangell Island—1 bull with spike-fork or 50-inch antler	Oct. 1–Oct. 15.
Unit 5(A), except Nunatak Bench—1 bull by registration permit only	Oct. 15–Nov. 15.
Unit 5(A), Nunatak Bench	No open season.
Unit 5(B)—1 bull by registration permit only	Sept. 1–Nov. 15.
Unit 8	No open season.
Unit 9(A)—1 bull	Sept. 5–Sept. 20.
Unit 9(B) [Lake Clark drainage only]—1 bull; however, antlerless moose may be taken only from Dec. 16–Dec. 31.	Sept. 5–Sept. 20, Dec. 1–Dec. 31.
Remainder of Unit 9(B)—1 bull	Sept. 5–Sept. 20, Dec. 1–Dec. 31.
Unit 9(C), that portion draining into the Naknek River—1 moose; however, antlerless moose may be taken by registration permit only from Dec. 1–Dec. 31.	Sept. 5–Sept. 20, Dec. 1–Dec. 31.
Remainder of Unit 9(C)—1 moose; however, antlerless moose may be taken only from Dec. 1–Dec. 31.	Sept. 5–Sept. 20, Dec. 1–Dec. 31.
Unit 9(D)	No open season.
Unit 9(E)—1 bull; however, moose taken from Sept. 10–Sept. 20 must have 50-inch antlers.	Sept. 10–Sept. 20, Dec. 1–Dec. 15.
Unit 11—1 bull	Sept. 1–Sept. 20.
Unit 12, that portion drained by the Tanana, Nabesna and Chisana Rivers east of the Tetlin Reservation boundary and north of the winter trail from Pickerel Lake to the Canadian border—1 bull.	Sept. 1–Sept. 20, Nov. 20–Nov. 30.
Unit 12, that portion lying east of the Nabesna River and south of the winter trail running southeast from Pickerel Lake to the Canadian border—1 bull with 50-inch antlers.	Sept. 1–Sept. 30.
Unit 12, that portion drained by the Little Tok River upstream from and including the first eastern tributary from the headwaters of Tuck Creek.	No open season.
Remainder of Unit 12—1 bull	Sept. 1–Sept. 20.

BIG GAME ANIMALS—Continued

Units and bag limits	Subsistence open season
Unit 13—1 bull moose by Federal registration permit only; only 1 permit will be issued per household.	Aug. 25–Sept. 20.
Unit 15(C), that portion southwest of a line from Point Pogibshi to the point of land between Rocky Bay and Windy Bay—1 bull.	Sept. 1–Sept. 30.
Unit 16(B) Kalgin Island –1 moose	Aug. 25–Sept. 30.
Unit 16(B) Redoubt Bay drainages south and west of, and including, the Kustatan River drainage—1 bull.	Sept. 1–Sept. 15.
Remainder of Unit 16(B)—1 moose; however, antlerless moose may be taken only from Sept. 25–Sept. 30, and during the period Dec. 1–Feb. 28, by registration permit.	Sept. 1–Sept. 30, Dec. 1–Feb. 28.
Unit 17(A)	No open season.
Unit 17(B), that portion that includes all the Mulchatna River drainage upstream from and including the Chilchitna River drainage—1 bull.	Sept. 1–Sept. 20.
Remainder of Unit 17(B)—1 bull	Aug. 20–Sept. 15, Dec. 1–Dec. 31
Unit 17(C), that portion that includes the Iowithla drainage and Sunshine Valley and all lands west of Woodriver and south of Aleknagik Lake—1 bull.	Aug. 20–Sept. 15
Remainder of Unit 17(C)—1 bull	Aug. 20–Sept. 15, Dec. 1–Dec. 31
Unit 18, that portion north and west of a line from Cape Romanzof to Kuzilvak Mountain, and then to Mountain Village, and west of (but not including) the Andreafsky River drainage.	No open season.
Remainder of Unit 18—1 bull	Sept. 1–Sept. 30, Dec. 20–Dec. 30.
Unit 19; residents of Lime Village only: No bag limit; either sex	Aug. 10–Sept. 25, Nov. 20–Mar. 31
Unit 19(A)—1 moose, however, antlerless moose may be taken only from Nov. 20–Nov. 30 and Feb. 1–Feb. 10.	Sept. 1–Sept. 20, Nov. 20–Nov. 30, Feb. 1–Feb. 10.
Unit 19(B)—1 bull	Sept. 1–Sept. 30.
Unit 19(C)—1 bull	Sept. 1–Oct. 10.
Unit 19(D), that portion of the Upper Koskokwim Controlled Use Area within the North Fork drainage upstream from the confluence of the South Fork to the mouth of the Swift Fork—1 bull.	Sept. 1–Sept. 30.
Unit 19(D), remainder of the Upper Kuskokwim Controlled Use Area—1 bull	Sept. 1–Sept. 30, Dec. 1–Feb. 28.
Remainder of Unit 19(D)—1 bull	Sept. 1–Sept. 30, Dec. 1–Dec. 15.
Unit 20(A), that portion south of the Rex Trail and west of the Wood River Controlled Use Area, and the Yanert Controlled Use Area—1 bull with a spike-fork or 50-inch antlers.	Sept. 1–Sept. 20.
Remainder of Unit 20(A)—1 bull	Sept. 1–Sept. 20.
Unit 20(B), that portion within the Minto Flats Management Area—1 bull by registration permit only.	Sept. 1–Sept. 20, Jan. 10–Feb. 28
Unit 20(B), the drainage of the Middle Fork of the Chena River and that portion of the Salcha River Drainage upstream from and including Goose Creek— 1 bull.	Sept. 1–Sept. 20.
Remainder of Unit 20(B)—1 bull	Sept. 1–Sept. 20
Unit 20(C)—1 bull; however, white-phased or partial albino (more than 50 percent white) moose may not be taken.	Sept. 1–Sept. 20
Unit 20(D), that portion lying south of the north bank of the Tanana River and east of the east bank of the Johnson River—1 bull.	Sept. 1–Sept. 20
Residents of that portion of Unit 20(D) between Bear Creek and Berry Creek: 1 bull by registration permit only.	Jan. 1–Feb. 15.
Unit 20(D), that portion lying west of the east bank of the Johnson River and south of the north bank of the Tanana River, except the Delta Junction Closed Area—1 bull with spike-fork or 50-inch antlers.	Sept. 1–Sept. 15.
Remainder of Unit 20(D)—1 bull	Sept. 1–Sept. 10.
Unit 20(E), that portion drained by the Ladue, Sixty-mile, and Forty-mile Rivers (all forks) from Mile 9½ to Mile 145 Taylor Highway, including the Boundary Cutoff Road—1 bull.	Sept. 1–Sept. 10.
Remainder of Unit 20(E), that portion draining into the Yukon River upstream from and including the Charley River drainages to and including the Boundary Creek drainages and the Taylor Highway from mile 145 to Eagle—1 bull.	Sept. 5–Sept. 25.
Unit 20(F)—1 bull	Sept. 1–Sept. 15, Dec. 1–Dec. 10.
Unit 21(A)—1 bull	Sept. 5–Sept. 30, Nov. 1–Nov. 30
Units 21(B) and 21(C)—1 bull	Sept. 5–Sept. 25.
Unit 21(D)—1 moose; antlerless moose may be taken only from Sept. 21–Sept. 25 and Feb. 1–Feb. 5; moose may not be taken within one-half mile of the Yukon River during the February season.	Sept. 5–Sept. 25, Feb. 1–Feb. 5
Unit 21(E); Residents of Grayling, Anvik, Shageluk, Holy Cross and Russian Mission only—1 moose.	Sept. 5–Sept. 25, Feb. 1–10.
Remainder of Unit 21(E)—1 bull	Sept. 5–Sept. 25.
Unit 22(A)—1 bull	Aug. 1–Sept. 30, Dec. 1–Dec. 31.
Unit 22(B)—1 moose; however, antlerless moose may be taken only from Dec. 1–Dec. 31; no person may take a calf or a cow accompanied by a calf.	Aug. 1–Jan. 31.
Unit 22(c)—1 bull	Sept. 1–Sept. 14.

BIG GAME ANIMALS—Continued

Units and bag limits	Subsistence open season
Unit 22(D), drainages into the north side of Port Clarence, the north side of Grantley Harbor, and the north side of Imuruk Basin, excluding the Kuzitrin, Pilgrim and Kougarok River drainages—1 moose; however, antlerless moose may be taken only from Aug. 1–Dec. 31; no person may take a calf or a cow accompanied by a calf; only antlered moose may be taken Jan. 1–Jan. 31.	Aug. 1–Jan. 31.
Remainder of Unit 22(D)—1 moose; no person may take a calf or a cow accompanied by a calf.	Aug. 1–Dec. 31.
Unit 22(E)—1 moose. No person may take a calf or a cow accompanied by a calf	Aug. 1–Mar. 31.
Unit 23, that portion north and west of and including the Noatak River drainage—1 moose; however, antlerless moose may be taken only from Sept. 1–Mar. 31; no person may take a cow accompanied by a calf.	Aug. 1–Mar. 31.
Remainder of Unit 23—1 moose; however, antlerless moose may be taken only from Sept. 15–Oct. 31; no person may take a cow accompanied by a calf.	Aug. 1–Dec. 31.
Unit 24, that portion within the Koyukuk Controlled Use Area—1 moose; however, antlerless moose may be taken only from Sept. 21–Sept. 25, Dec. 1–Dec. 10, and Mar. 1–Mar. 10.	Sept. 5–Sept. 25, Dec. 1–Dec. 10, Mar. 1–Mar. 10.
Unit 24, that portion that includes the John River drainage upstream from but excluding the Hunt Fork drainage—1 moose.	Aug. 1–Dec. 31.
Unit 24, the Alatna River drainage upstream from and including Helpmejack Creek drainage, the John River drainage upstream from and including the Malemute Fork drainage and downstream from and including the Hunt Fork drainage, the Wild River drainage upstream from and including the Michigan Creek drainage, and the North Fork Koyukuk River drainage north of the Bettles/Coldfoot winter trail—1 moose; however, antlerless moose may be taken only from Sept. 21–Sept. 25 and Mar. 1–Mar. 10.	Aug. 25–Sept. 25, Mar. 1–Mar. 10.
Remainder of Unit 24—1 bull	Aug. 25–Sept. 25.
Residents of Unit 25(A) and Residents of Venetie only—1 bull	Aug. 25–Sept. 25, Dec. 1–Dec. 10.
Unit 25(B), that portion within the Porcupine River drainage upstream from but excluding the Coleen River drainage—1 bull.	Aug. 25–Sept. 25, Dec. 1–Dec. 10.
Unit 25(B), that portion within the Yukon River drainage upstream from and including the Kandik River drainage—1 bull.	Sept. 5–Sept. 25, Dec. 1–Dec. 10.
Remainder of Unit 25(B)—1 bull	Aug. 25–Sept. 25, Dec. 1–Dec. 10.
Unit 25(C)—1 bull	Sept. 5–Sept. 15.
Unit 25(D), that portion lying west of a line extending from the Unit 25(D) boundary on Preacher Creek, then downstream along Preacher Creek, Birch Creek and Lower Mouth Birch Creek to the Yukon River, then downstream along the north bank of the Yukon River (including islands) to the confluence of the Hadweenzik River, then upstream along the west bank of the Hadweenzik River to the confluence of Forty and One-Half Mile Creek, then upstream along Forty and One-Half Mile Creek to Nelson Mountain on the Unit 25(D) boundary. Residents of Beaver, Birch Creek, and Stevens Village only—1 bull by Federal registration permit only.	Aug. 25–Sept. 25, Dec. 1–Dec. 10, Feb. 18–Feb. 28.
Remainder of Unit 25(D) Residents of Unit 25 excluding residents of the western portion of Unit 25(D) described above—1 bull.	Aug. 25–Sept. 25, Dec. 1–Dec. 10.
Unit 26(A)—1 moose; however, no person may take a cow accompanied by a calf	Aug. 1–Dec. 31.
Unit 26(B), that portion within two miles of the Dalton Highway	No open season.
Remainder of Unit 26(B), and Unit 26(C)—1 moose	Aug. 1–Dec. 31.
Muskox—seasons and bag limits	
Units 26(B) and 26(C); Residents of Kaktovik only—1 muskox by Federal registration permit only.	Oct. 1–Oct. 31, Mar. 1–Mar. 31.
Wolf—seasons and bag limits	
Units 1–5—No limit	No closed season.
Units 6, 8, and 10—2 wolves	Aug. 10–Apr. 30.
Units 7, 14(C) and 15—1 wolf	Aug. 10–Apr. 30.
Units 9, 17, 19, 21, 23, 24, and 25(B)–(D)—10 wolves	Aug. 10–Apr. 30.
Units 11, 12, 13, 20, 22, 25(A), and 26—No limit	Aug. 10–Apr. 30.
Units 14(A) and (B), 16, and 18—4 wolves	Aug. 10–Apr. 30.
Wolverine—seasons and bag limits	
Units 1–5—1 wolverine	Nov. 10–Feb. 15.
Units 6–26—1 wolverine	Sept. 1–Mar. 31.

FUR ANIMALS

Units and Bag Limits	Subsistence Open Season
Coyote—seasons and bag limits	
Units 1-5, 6(A), 6(D), and 8-14, and 16-2—2 coyotes	Sept. 1-Apr. 30.
Units 6(B) and 6(C)—No limit	No closed season.
Units 7 and 15—No limit	Sept. 1-Apr. 30.
Arctic fox—seasons and bag limits (including blue and white phases)	
Units 9 and 17—No limit	Dec. 1-Mar. 15.
Unit 10—No limit	No closed season.
Units 18, 22, 23, and 26—2 foxes	Sept. 1-Apr. 30.
Red fox—seasons and bag limits (including cross, black, and silver phases)	
Units 1-14, 16-26—2 foxes	Nov. 1-Feb. 15.
Unit 15	No open season.
Lynx—seasons and bag limits	
Units 1-5—2 lynx	Dec. 1-Feb. 15.
Units 6, 11, 13, 14, and 16—2 lynx	Dec. 15-Jan. 15.
Units 7, 8, 10, and 15—2 lynx	No open season.
Units 9 and 17—2 lynx	Nov. 10-Feb. 28.
Units 12 and 20(E)—2 lynx	Nov. 1-Jan. 31.
Unit 18—2 lynx	Nov. 10-Mar. 31.
Remainder of Unit 20, and Unit 25(C)—2 lynx	Dec. 1-Jan. 1.
Unit 23—2 lynx	Dec. 1-Jan. 15.
Units 19, 21, 24, and remainder of Unit 25—2 lynx	Nov. 1-Feb. 28.
Units 22 and 26—2 lynx	Nov. 1-Apr. 15.
Red squirrel, ground squirrel, flying squirrel—seasons and bag limits.	
Units 1-26—No limit	No closed season.

SMALL GAME

Units and Bag Limits	Subsistence Open Season
Grouse (spruce, blue, ruffed, and sharp-tailed)—seasons and bag limits	
Units 1-6—5 per day, 10 in possession	Aug. 1-May 15.
Units 7, 11, 13-16 (except 14(C))—15 per day, 30 in possession	Aug. 10-Mar. 31.
Units 8 and 10	No open season.
Unit 14(C)—5 per day, 10 in possession	Day after Labor Day-Mar. 31.
Units 9, 17-19, 21-24 and 26—15 per day, 30 in possession	Aug. 10-Apr. 30.
Units 12, 20 (except 20(D)) and 25(C)—15 per day, 30 in possession	Aug. 10-Mar. 31.
Unit 20(D), that portion south of the Tanana River and west of the Johnson River—	
10 per day provided that not more than 2 may be sharp-tailed grouse, by falconry; 10 in possession; provided not more than 2 may be sharp-tailed grouse, by falconry only.	Aug. 10-Aug. 24.
15 per day, provided that not more than 5 may be sharp-tailed grouse, 30 in possession, provided not more than 10 may be sharp-tailed grouse	Aug. 25-Mar. 31.
Remainder of Unit 25—15 per day, 30 in possession	Aug. 10-Apr. 30.
Snowshoe and Arctic Hares—seasons and bag limits	
Units 1-5—5 per day	Sept. 1-Apr. 30.
Units 6-26, except 14(A) and 14(C). No limit	No closed season.
Unit 14(A)—5 per day	No closed season.
Unit 14(C)—5 per day	Day after Labor Day—Apr. 30.
Ptarmigan (Rock, willow, and white-tailed)—seasons and bag limits	
Units 1-6—20 per day, 40 in possession	Aug. 1-May 15.
Units 7, 11, 13-16 (except 14(A), 14(C), and 15(C)) 20 per day, 40 in possession	Aug. 10-Mar. 31.
Unit 14(A)—10 per day, 20 in possession	Aug. 10-Mar. 31.
Unit 14(C)—10 per day, 20 in possession	Day after Labor Day—Mar. 31.
Unit 15(C)—	
10 per day, 20 in possession	Aug 10-Dec. 31.
5 per day, 10 in possession	Jan. 1-Mar. 31.
Units 8-10, 12, 17-19, and 21-26 (except 25(C))—20 per day, 40 in possession	Aug. 10-Apr. 30.
Units 20 and 25(C), those portions within 5 miles of Alaska Route 6 (Steese Hwy.) and Route 5 (Taylor Hwy. both to Eagle and the Alaska-Canada boundary), and that portion of Route 4 (Richardson Hwy.) south of Delta Junction—20 per day, 40 in possession	Aug. 10-Mar. 31.

SMALL GAME—Continued

Units and Bag Limits	Subsistence Open Season
Remainder of Units 20 and 25(C)—20 per day, 40 in possession	Aug. 10–Apr. 30.

WATERFOWL

Units and Bag Limits	Subsistence Open Season
Ducks (except sea ducks)—seasons and bag limits	
Units 1-4—5 per day and 15 in possession; however, not more than 2 per day and 6 in possession may be pintail ducks, and not more than 1 per day and 1 in possession may be canvasbacks.	Sept. 1–Dec. 16.
Units 5–7, 9, 10 (Unimak Island only), and 14-16—6 per day and 18 in possession; however, not more than 2 per day and 6 in possession may be pintail ducks, and not more than 1 per day and 1 in possession may be canvasbacks.	Sept. 1–Dec. 16.
Units 8 and 10, (except Unimak Island)—5 per day and 15 in possession; however, not more than 2 per day and 6 in possession may be pintail ducks, and not more than 1 per day and 1 in possession may be canvasbacks.	Oct. 8–Jan. 22.
Units 11-13 and 17-26—8 per day and 24 in possession; however, not more than 2 per day and 6 in possession may be pintail ducks, and not more than 1 per day and 1 in possession may be canvasbacks.	Sept. 1–Dec. 16.
Sea ducks (eider, scoter, old squaw, harlequin) and mergansers—seasons and bag limits	
Units 1-7, 9, 10 (Unimak Is. only), and 11-26—15 per day, 30 in possession	Sept. 1–Dec. 16.
Units 8 and 10 (except Unimak Is.)—15 per day, 30 in possession	Oct. 8–Jan. 22.
Geese, cackling Canada—seasons and bag limits	
Units 1-26	No open season.
Geese, Canada (except cackling Canada)—seasons and bag limits	
Units 1-4, 7, 9 (except 9(E)), 10 (Unimak Island only), 11-17, and 19-26 4 per day; 8 in possession.	Sept. 1–Dec. 16.
Units 5 and 6—4 per day, 8 in possession	Sept. 21–Dec. 16.
Units 8, 9(E), 10 (except Unimak Island) and 18	No open season.
Geese, White-fronted—seasons and bag limits	
Units 1-7, 9, and 14-18—2 per day, 4 in possession	Sept. 1–Dec. 16.
Unit 8—2 per day, 4 in possession	Oct. 8–Jan. 22.
Unit 10 (except Unimak Island) 4 per day, 8 in possession	Oct. 8–Jan. 22.
Unit 10 (Unimak Island only), 11-13, and 19-26—4 per day, 8 in possession	Sept. 1–Dec. 16.
Geese, Snow—seasons and bag limits	
Unit 1 (except 1(C)), 2-7, 9, 10 (Unimak Island only), and 11-26—6 per day, 12 in possession.	Sept. 1–Dec. 16.
Unit 1(C)	No open season.
Units 8 and 10 (except Unimak Island)	Oct. 8–Jan. 22.
Brant—seasons and bag limits	
Units 1-7, 9, 10 (Unimak Island only), and 11-26—2 per day, 4 in possession	Sept. 1–Dec. 16.
Units 8 and 10 (except Unimak Island) 2 per day, 4 in possession	Oct. 8–Jan. 22.
Emperor Geese—seasons and bag limits	
Units 1-26	No open season.
Cranes—seasons and bag limits	
Units 1-7, 9, 10 (Unimak Island only), and 14-17—2 per day, 4 in possession	Sept. 1–Dec. 16.
Units 8 and 10 (except Unimak Island) 2 per day, 4 in possession	Oct. 8–Jan. 22.
Units 11, 12, 13 and 18-26—3 per day, 6 in possession	Sept. 1–Dec. 16.
Snipe—seasons and bag limits	
Units 1-7, 9, 10 (Unimak Island only), and 11-26—8 per day, 16 in possession	Sept. 1–Dec. 16.
Units 8 and 10 (except Unimak Island)—8 per day, 16 in possession	Oct. 8–Jan. 22.
Tundra Swans—seasons and bag limits	
Unit 22—1 swan, by registration permit only	Sept. 1–Oct. 30.
All other units	No open season.

Note.—The total combined bag limit for all Canada, white-fronted and snow geese is 6 per day and 12 in possession. In no unit may more than 4 per day, 8 in possession be any combination of Canada and white-fronted geese. In Units 1-9, and 14-18 no more than 2 per day, 4 in possession may be white-fronted geese.

UNCLASSIFIED GAME

Units and bag limits	Subsistence open season
Bat, shrew, rat, mouse, and porcupine—seasons and bag limits	
Units 1-26—No limit	No closed season.
Raven—seasons and bag limits	
Units 1-26	No open season.
Cormorant—seasons and bag limits	
Units 10, 17, 18, 22, and 23 No limit; however, a bird may only be taken if used for food or clothing, and no bird may be sold or offered for sale.	No closed season.
Crow—seasons and bag limits	
Units 1-9 and 15—40 per day	Mar. 1-Apr. 15, Sept. 1-Nov. 17.
Units 10-14 and 16-26	No open season.
Snowy Owl—seasons and bag limits	
Units 17, 18, 22, 23, and 26—No limit; however, a bird may only be taken if used for food or clothing, and no bird may be sold or offered for sale.	No closed season.
Units 1-16, 19-21, 24, and 25	No open season.
Magpie—seasons and bag limits	
Units 1-26	No open season.
Raccoon—seasons and bag limits	
Units 1-26—No limit	No closed season.

(w) Subsistence Trapping Seasons and Bag Limits.

It is lawful to trap for subsistence purposes a fur bearer only in a game management unit or a portion of a unit open to trapping in accordance with the open season and bag limit prescribed in this subsection. Bag limits and open seasons are based upon the regulatory year.

TRAPPING SEASONS—FUR BEARERS

Units and bag limits	Subsistence open season
Beaver—trapping seasons and bag limits	
Units 1 (except Unit 1(D)), 2, 3 (except Mitkof Island), and 4 (that portion east of Chatham Strait)—No limit.	Dec. 1-May 15.
Unit 1(D)	No open season.
Unit 3, Mitkof Island—No limit	Dec. 1-Apr. 15.
Unit 4 (that portion west of Chatham Strait)	No open season.
Unit 5—No limit	Nov. 10-May 15.
Unit 6—20 per season	Feb. 1-Mar. 31.
Units 7 and 15—20 per season	Feb. 1-Mar. 31.
Units 8, 11, 13, 14(A), 14(B), and 16—30 per season	Nov. 10-Apr. 30.
Unit 9—40 per season	Jan. 1-Mar. 31.
Units 10 and 26	No open season.
Unit 12—15 per season	Nov. 1-Apr. 15.
Unit 14(C), that portion within the drainages of Glacier Creek, Kern Creek, Peterson Creek, and the Twentymile River—20 per season.	Feb. 1-Mar. 31.
Remainder of Unit 14(C)	No open season.
Unit 17(A)—20 per season	Jan. 1-Jan. 31.
Units 17(B) and 17(C)—20 per season	Jan. 1-Feb. 28.
Unit 18—No limit	Nov. 1-June 10.
Units 19, 21, and 24—50 per season	Nov. 1-Apr. 15.
Unit 20(A)—25 per season	Feb. 1-Apr. 15.
Unit 20(B), that portion of the Chena River downstream from its confluence with the Little Chena River, and Badger (Piledriver) Sough downstream from Plack Road.	No open per season; however, seasons may be set and bag limits, by permit only, to curb high beaver populations and reduce property damage.
Remainder of Unit 20(B) and Units 20(C), 20(E), and that portion of 20(D) draining into the north bank of the Tanana River, including the islands in the Tanana River—25 per season.	Nov. 1-Apr. 15.
Remainder of Unit 20(D)—15 per season	Feb. 1-Apr. 15.
Units 20(F) and 25 (except Unit 25(C))—50 per season	Nov. 1-Apr. 15.
Units 22(A) and 22(B)—50 per season	Nov. 1-June 10.

TRAPPING SEASONS—FUR BEARERS—Continued

Units and bag limits	Subsistence open season
Remainder of Unit 22—50 per season	Nov. 1-Apr. 15.
Unit 23, the Kobuk and Selawik River drainages—50 per season	Nov. 1-June 10.
Remainder of Unit 23—30 per season	Nov. 1-June 10.
Unit 25(C)—25 per season	Nov. 1-Apr. 15.
Coyote—trapping seasons and bag limits	
Units 1-5—No limit	Dec. 1-Feb. 15.
Unit 6(C), that portion south of the Copper River Highway and east of the Heney Range—No limit	Nov. 10-Apr. 30.
Remainder of Unit 6, and Units 9-11, 13, 14(A), 14(B), and 16-18—No limit	Nov. 10-Mar. 31.
Units 7, 14(C), and 15—No limit	Nov. 10-Feb. 28.
Units 12 and 20(E)—No limit	Nov. 1-Feb. 28.
Units 19, 20 (except 20(E)), 21, 24, and 25—No limit	Nov. 1-Mar. 31.
Units 22, 23, and 26—No limit	Nov. 1-Apr. 15.
Fox, arctic, white, or blue—trapping seasons and bag limits	
Units 9, 10, and 17—No limit	Nov. 10-Feb. 28.
Unit 18—No limit	Nov. 10-Mar. 31.
Units 22, 23, and 26—No limit	Nov. 1-Apr. 15.
Fox, red (including the cross, black, or silver color phases)—trapping seasons and bag limits	
Units 1-5—No limit	Dec. 1-Feb. 15.
Units 6, 9-11, 13, 14(A), 14(B), 16, and 17—No limit	Nov. 10-Feb. 2.
Units 7, 14(C), and 15—One per season	Nov. 10-Feb. 28.
Unit 8—No limit	Nov. 10-Mar. 31.
Units 12, 20, 21, 24, and 25—No limit	Nov. 1-Feb. 28.
Unit 18—No limit	Nov. 10-Mar. 31.
Unit 19—No limit	Nov. 1-Mar. 31.
Units 22, 23, and 26—No limit	Nov. 1-Apr. 15.
Lynx—trapping seasons and bag limits	
Units 1-5—No limit	Dec. 1-Feb. 15.
Units 6, 11, 13, 14, 16—No limit	Dec. 15-Jan. 15.
Units 7, 8, 10, and 15	No open season.
Unit 18—No limit	Nov. 10-Mar. 31.
Units 9 and 17—No limit	Nov. 10-Feb. 28.
Units 12 and 20(E)—No limit	Nov. 1-Jan. 31.
Unit 19—No limit	Nov. 1-Feb. 28.
Remainder of Unit 20 and Unit 25(C)—No limit	Dec. 1-Jan. 31.
Unit 21—No limit	Nov. 1-Feb. 28.
Units 22 and 26—No limit	Nov. 1-Apr. 15.
Unit 23—Three lynx	Dec. 1-Jan. 15.
Unit 24—No limit	Nov. 1-Feb. 28.
Remainder of Unit 25—No limit	Nov. 1-Feb. 28
Marten—trapping seasons and bag limits	
Units 1-4—No limit	Dec. 1-Feb. 15.
Unit 5—No limit	Nov. 10-Feb. 15.
Units 6-8, 11, and 13-16—No limit	Nov. 10-Jan. 31.
Units 9 and 17—No limit	Nov. 10-Feb. 28.
Units 12, 19, 20, 21, 24, and 25—No limit	Nov. 1-Feb. 28.
Unit 18—No limit	Nov. 10-Mar. 31.
Units 22, 23, and 26—No limit	Nov. 1-Apr. 15.
Mink and weasel—trapping seasons and bag limits	
Units 1-4—No limit	Dec. 1-Feb. 15.
Unit 5—No limit	Nov. 10-Feb. 15.
Units 6-8, 11, 13-16, and 18—No limit	Nov. 10-Feb. 28.
Units 9, 10, and 17—No limit	Nov. 10-Feb 28.
Units 12, 19, 20, 21, 24, and 25—No limit	Nov. 1-Feb. 28.
Units 22, 23, and 26—No limit	Nov. 1-Jan. 31.
Muskrat—trapping seasons and bag limits	
Units 1-5—No limit	Dec. 1-Feb. 15.
Units 6, 8-11, 13, and 16-18—No limit	Nov. 10-June 10.
Units 7, 14, and 15—No limit	Nov. 10-May 15.
Units 12 and 20(E)—No limit	Sept. 20-June 10.
Units 19, 20 (except 20(E)), and 21-26—No limit	Nov. 1-June 10.

TRAPPING SEASONS—FUR BEARERS—Continued

Units and bag limits	Subsistence open season
Otter—land trapping seasons and bag limits	
Units 1-4—No limit	Dec. 1-Feb. 15.
Unit 5—No limit	Nov. 10-Feb. 15.
Units 6, 9-11, 13, 14(A), 14(B), and 16-18—No limit	Nov. 10-Mar. 31.
Units 7, 14(C), and 15(C)—No limit	Nov. 10-Feb. 28.
Unit 8—No limit	Nov. 10-Jan. 31.
Units 11 and 13—No limit	Nov. 10-Apr. 15.
Units 12 and 19-26—No limit	Nov. 1-Apr. 15.
Units 15(A) and 15(B)—No limit	Nov. 10-Jan. 31.
Otter, sea—trapping seasons and bag limits	
Units 1-26	No open season.
Squirrel (red, flying, parka, or ground) and marmot—trapping seasons and bag limits	
Units 1-26—No limit	No closed season.
Wolf—trapping seasons and bag limits	
Units 1-5—No limit	Nov. 10-Apr. 30.
Units 6, 9, 10, 11, 13, 14(A), 14(B), and 16-18—No limit	Nov. 10-Mar. 31.
Units 7, 14(C), and 15—No limit	Nov. 10-Feb. 28 (season may be closed by emergency order).
Units 12 and 20(E)—No limit	Oct. 1-Apr. 30.
Units 19, 20 (except 20(E)), 21, 24, and 25—No limit	Nov. 1-Mar. 31.
Units 22, 23, and 26—No limit	Nov. 1-Apr. 15.
Wolverine—trapping seasons and bag limits	
Units 1-5—No limit	Nov. 10-Apr. 30.
Units 6-11, 13, 14, 15(B), 15(C), 16, and 17—No limit	Nov. 10-Feb. 28.
Unit 15(A)	No open season.
Units 12, 20, and 25(C)—No limit	Nov. 1-Feb. 28.
Unit 18—No limit	Nov. 10-Mar. 31.
Units 19, 21, 24, and 25 (except 25(C))—No limit	Nov. 1-Mar. 31.
Units 22, 23, and 26—No limit	Nov. 1-Apr. 15.

(x) A fur bearer may only be taken under this section by a person who possesses a valid State of Alaska trapping license, or by a resident of Alaska under the age of 16.

§ 242.24 Subsistence fishing.

(a) Regulations in this section apply to subsistence fishing for salmon, herring, pike, bottomfish, smelt, and other types of finfish or their parts except halibut, and aquatic plants only on public lands in Alaska (derived from 5 AAC 01.001).

(b) Aquatic plants and finfish other than salmon may be taken for subsistence purposes at any time on any public lands in the State of Alaska by any method unless restricted by the subsistence fishing regulations in this section. Salmon may be taken for subsistence purposes only as provided in this section (derived from 5 AAC 01.005).

(c) The following definitions shall apply to all regulations contained in this section and in § 242.26 (derived from 5 AAC 39.105(d) and 39.975).

Abalone Iron is a flat device used for taking abalone and which is more than one inch (24mm) in width and less than 24 inches (61 cm) in length and with all prying edges rounded and smooth.

Anchor is a device used to hold a salmon fishing vessel or net in a fixed position relative to the beach; this includes using part of the seine or lead, a ship's anchor or being secured to another vessel or net that is anchored.

Bag Limit means the maximum legal take per person or designated group, per specified time period, even if part or all of the fish are preserved.

Beach seine is a floating net designed to surround fish which is set from and hauled to the beach.

Beam trawl is a trawl with a fixed net opening using a wood or metal beam.

Crab means the following species: *Paralithodes camshatica* (red king crab); *Paralithodes platypus* (blue king crab); *Lithodes couesi; Lithodes aequispina* (brown king crab); all species of the genus Chionoecetes (tanner or snow crab); *Cancer magister* (Dungeness crab).

Dipnet is a bag-shaped net supported on all sides by a rigid frame; the maximum straight-line distance between any two points on the net frame, as measured through the net opening, may not exceed five feet; the depth of the bag must be at least one-half of the greatest straight-line distance, as measured through the net opening; no portion of the bag may be constructed of webbing that exceeds a stretched measurement of 4.5 inches; the frame must be attached to a single rigid handle and be operated by hand.

Diving Gear is any type of hard hat or skin diving equipment.

Drainage means all of the waters comprising a watershed including tributary rivers, streams, sloughs, ponds and lakes which contribute to the supply of the watershed.

Drift gill net is a drifting gill net that has not been intentionally staked, anchored or otherwise fixed.

Fishing Site means a structure or vessel used by an Alaska Commercial Fisheries Entry Commission permit holder for providing shelter in support of the operation of stationary net gear.

Fishwheel is a fixed, rotating device for catching fish which is driven by river current or other means of power.

Freshwater of streams and rivers means the line at which freshwater is separated from saltwater at the mouth of streams and rivers by a line drawn between the seaward extremities of the exposed tideland banks at the present stage of the tide.

Fyke net is a fixed, funneling (fyke) device used to entrap fish.

Gear means any type of fishing apparatus.

Gill net is a net primarily designed to catch fish by entanglement in the mesh and consisting of a single sheet of webbing hung between cork line and lead line, and fished from the surface of the water.

Grappling hook is a hooked device with flukes or claws and attached to a line and operated by hand.

Groundfish—Bottomfish means any marine finfish except halibut, osmerids, herring and salmonids.

Hand purse seine is a floating net designed to surround fish and which can be closed at the bottom by pursing the lead line; pursuing may only be done by hand power, and a free-running line through one or more rings attached to the lead line is not allowed.

Hand troll gear consists of a line or lines with lures or baited hooks which are drawn through the water from a vessel by hand trolling, strip fishing or other types of trolling, and which are retrieved by hand power or hand-powered crank and not by any type of electrical, hydraulic, mechanical or other assisting device or attachment.

Herring pound is an enclosure used primarily to retain herring alive over extended periods of time.

Hung measure means the maximum length of the cork line when measured wet or dry with traction applied at one end only.

Hydraulic clam digger is a device using water or a combination or air and water to remove clams from their environment.

Inclusive season dates means whenever the doing of an act between certain dates or from one date to another is allowed or prohibited, the period of time thereby indicated includes both dates specified; the first date specified designates the first day of the period, and the second date specified designates the last day of the period.

Lead is a length of net employed for guiding fish into a seine or set gill net.

Legal limit of fishing gear means the maximum aggregate of a single type of fishing gear permitted to be used by one individual or boat, or combination of boats in any particular regulatory area, district or section.

Long line is a stationary buoyed or anchored line or a floating, free drifting line with lures or baited hooks attached.

Mechanical clam digger is a mechanical device used or capable of being used for the taking of clams.

Mechanical jigging machine is a mechanical device with line and hooks used to jig for halibut and bottomfish, but does not include hand gurdies or rods with reels.

Net gear site means the in-water location of stationary net gear.

Otter trawl is a trawl with a net opening controlled by devices commonly called otter doors.

Pelagic trawl is a trawl where the net, or the trawl doors or other trawl-spreading device, do not operate in contact with the seabed, and which does not have attached to it any protective device, such as chafing gear, rollers, or bobbins, that would make it suitable for fishing in contact with the seabed.

Possession limit means the maximum number of fish a person or designated group may have in possession if the fish have not been canned, salted, frozen, smoked, dried or otherwise preserved so as to be fit for human consumption after a 15-day period.

Pot is a portable structure designed and constructed to capture and retain fish and shellfish alive in the water.

Power gurdy troll gear consists of a line or lines with lures or baited hooks which are drawn through the water by a power gurdy.

Purse seine is a floating net designed to surround fish and which can be closed at the bottom by means of a free-running line through one or more rings attached to the lead line.

Ring net is a bag-shaped net suspended between no more than two frames; the bottom frame may not be larger in perimeter than the top frame; the gear must be non-rigid and collapsible so that when fishing it does not prohibit free movement of fish or shellfish across the top of the net.

Rockfish means all species of the genus *Sebastes*.

Salmon stream means any stream used by salmon for spawning or for traveling to a spawning area.

Salmon stream terminus means a line drawn between the seaward extremities of the exposed tideland banks of any salmon stream at mean lower low water.

Scallop dredge is a dredge-like device designed specifically for and capable of taking scallops by being towed along the ocean floor.

Seine vessel means the largest vessel, as determined by keel length, used to operate a seine and the vessel from which the seine is set, and to which the seine is retrieved.

Set gill net is a gill net that has been intentionally set, staked, anchored, or otherwise fixed.

Shovel is a hand-operated implement for digging clams or cockles.

Stretched measure means the average length of any series of 10 consecutive meshes measured from inside the first knot and including the last knot when wet after use, the 10 meshes, when being measured, shall be an integral part of the net, as hung, and measured perpendicular to the selvages; measurements shall be made by the means of a metal tape measure while the 10 meshes being measured are suspended vertically from a single peg or nail, under the five-pound weight, except as otherwise provided.

To operate fishing gear means the deployment of gear in the waters of Alaska, the removal of gear from the waters of Alaska, the removal of fish or shellfish from the gear during an open season or period, or possession of a gill net cointaining fish during an open fishing period, except that a gill net which is completely clear of the water is not considered to be operating for the purposes of minimum distance requirements.

Trawl is a bag-shaped net towed through the water to capture fish or shellfish.

(d) Methods, Means, and General Restrictions. (1) The bag limit specified herein for a subsistence season for a species and the State bag limit set for a State general season for the same species are not cumulative. This means that a person or designated group who has taken the bag limit for a particular species under a subsistence season specified herein may not after that, take any additional fish of that species under any other bag limit specified for a State general season.

(2) Unless otherwise provided in this chapter, the following are legal types of gear for subsistence fishing (derived from 5 AAC 01.010):

(i) Gear specified in paragraph c of this section.

(ii) Jigging gear which consists of a line or lines with lures or baited hooks which are operated during periods of ice cover from holes cut in the ice and are drawn through the water by hand;

(iii) A spear which is a shaft with a sharp point or fork-like implement attached to one end, used to thrust through the water to impale or retrieve fish and is operated by hand;

(iv) A lead which is a length of net employed for guiding fish into a seine or a length of net or fencing employed for guiding fish into a fishwheel, fyke net or dip net.

(3) Gill nets used for subsistence fishing for salmon may not exceed 50 fathoms in length, unless otherwise specified by the regulations in particular areas set forth in this section.

(4) It is prohibited to buy or sell subsistence-taken fish, their parts, or their eggs, unless otherwise specified in this section or unless, prior to the sale, the prospective buyer or seller obtains a determination from the Board that the sale constitutes customary trade.

(5) Fishing for, taking or molesting any fish by any means, or for any purpose, is prohibited within 300 feet of any dam, fish ladder, weir, culvert or other artificial obstruction.

(6) The use of explosives and chemicals is prohibited.

(7) Subsistence fishing by the use of a line attached to a rod or pole is prohibited except when fishing through the ice in the Kotzebue-Northern, Norton Sound-Port Clarence, Yukon, Kuskokwim and Bristol Bay areas.

(8) Each person subsistence fishing shall plainly and legibly inscribe his/her first initial, last name, and address on his/her fishwheel, or on a keg or buoy attached to gill nets and other unattended subsistence fishing gear.

(9) All pots used to take fish must contain an opening in the webbing of a side wall of the pot which has been laced, sewn or secured together by untreated cotton twine or other natural fiber no larger than 120 thread, which upon deterioration or parting of the twine produces an opening in the web with a perimeter equal to or exceeding one half of the tunnel eye opening perimeter.

(10) Persons licensed by the State of Alaska under Alaska Statutes to engage in a fisheries business may not receive for commercial purposes or barter or solicit to barter for subsistence-taken salmon or their parts. Further restrictions on the bartering of subsistence-taken salmon or their parts may be implemented by the Federal Subsistence Board if necessary.

(11) Gill net web must contain at least 30 filaments and all filaments must be of equal diameter, or the web must contain at least six filaments, each of which must be at least 0.20 millimeter in diameter.

(12) Except as provided elsewhere in this regulation, the taking of rainbow trout and steelhead is prohibited.

(13) Fish taken for subsistence use or under subsistence fishing regulations may not be subsequently used as bait for commercial and sport fishing purposes.

(14) The use of live nonindigenous fish as bait is prohibited.

(e) Unlawful Possession of Subsistence Finfish.—No person may possess, transport, give, receive or barter subsistence-taken fish or their parts that the person knows or should know were taken in violation of Federal or State statute or a regulation promulgated thereunder (derived from 5 AAC 01.030).

(f) Descriptions of Fishery Management Areas and Pertinent Restrictions.

(1) Kotzebue-Northern Area. The Kotzebue-Northern Area includes all waters of Alaska north of the latitude of the westernmost tip of Cape Prince of Wales and west of 141° W. long., including those waters draining into the Chukchi Sea and Arctic Ocean.

(i) Northern District: All waters of Alaska north of the latitude of the westernmost tip of Point Hope and west of 141° West longitude, including those waters draining into the Arctic Ocean and Chukchi Sea.

(ii) Kotzebue District: All waters of Alaska between the latitude of the westernmost tip of Point Hope and the latitude of the westernmost tip of Cape Prince of Wales, including those waters draining into the Chukchi Sea.

(A) Subdistrict 1: All waters east of a line from the terminus of the Tukrok River to an Alaska Department of Fish and game regulatory marker located on the sandbar at 66°49′ North latitude, 162°55′ West longitude to an

Alaska Department of Fish and Game marker located approximately two miles off Riley Wreck to an Alaska Department of Fish and Game marker located on the west bank of Riley Creek at 66°43′ North latitude, 162°19′ West longitude, and west of a line from a point one mile offshore from an ADF&G regulatory marker placed on the north shore of Hotham Inlet at 67°02′ N.lat., 161°59′ W.long., to a point one mile offshore from an ADF&G regulatory marker placed on the northern shore of the Baldwin Peninsula near the terminus of Singigrachak Creek (66°09′ N.lat., 162°11′ W.long.);

(B) Subdistrict 2: All waters at the mouth of the Noatak River inside a triangle defined by three points: the first point is located at the outlet of a small slough on the east side of the Noatak River at 66°59′ North latitude, 162°29′ West longitude; the west side of the triangle is located on a mud bar on the west side of the Noatak River extending between 66°77′ North latitude, 162°34′ West longitude and 66°57′ North latitude, 162°32′ West longitude;

(C) Subdistrict 3: All remaining waters in the Kotzebue District.

(iii) Fish may be taken at any time except that during the weekly fishing closures of the commercial salmon fishing season in the Kotzebue District commercial fishermen may not fish for subsistence programs.

(iv) Allowed gear and specifications

(A) Salmon may be taken only be gill nets or beach seines.

(B) Fish other than salmon may be taken by set gill net, drift gill net, beach seine, fishwheel, pot, long line, fyke net, dip net; jigging gear, spear, and lead.

(C) A gill net may obstruct not more than one-half the width of any fish stream. A stationary fishing device may obstruct not more than one-half the width of any salmon stream.

(D) In the Kotzebue District, kegs or buoys attached to subsistence gill nets may be any color except red.

(E) In the Kotzebue District, gill nets used to take sheefish may not be more than 50 fathoms in aggregate length nor 12 meshes in depth, nor have a mesh size larger than seven inches.

(F) Each fishwheel must have the first initial, last name, and address of the operator plainly and legibly inscribed on the side of the fishwheel facing midstream of the river.

(G) For all gill nets and unattended gear that are fished under the ice, the first initial, last name, and address of the operator must be plainly and legibly inscribed on a stake inserted in the ice and attached to the gear.

(v) Waters closed to subsistence fishing—In the Kotzebue District, the Noatak River one mile upstream and one mile downstream from the mouth of the Kelly River, and the Kelly River from its mouth to one-fourth mile upstream are closed to subsistence char fishing from June 1 through September 20.

(vi) Fish may be taken for subsistence purposes without a subsistence fishing permit.

(vii) Only those residents domiciled in the Northern District, except for those domiciled in State of Alaska Game Management Unit 26-B, may take fish in that district.

(viii) Only those residents domiciled within 20 miles of the coast between Cape Prince of Wales and Point Hope, including the village of Noatak, may take herring and herring roe in that location.

(ix) Only those residents domiciled in the Kotzebue District may take salmon, sheefish, and char in the district.

(2) Norton Sound-Port Clarence Area. The Norton Sound-Port Clarence Area includes all waters of Alaska between the latitude of the westernmost tip of Cape Prince of Wales and the latitude of Canal Point Light, including the waters of Alaska surrounding St. Lawrence and those waters draining into the Bering Sea.

(i) The Port Clarence District consists of all waters between the latitude of the westernmost tip of Cape Prince of Wales and the latitude of the westernmost tip of Cape Douglas.

(ii) The Norton Sound District consists of all waters between the latitude of the westernmost tip of Cape Douglas and the latitude of Canal Point Light. The following are regulatory subdistricts of the Norton Sound District:

(A) Subdistrict 1 consists of waters from the terminus of Penny River to the tip of Topkok Head;

(B) Subdistrict 2 consists of waters from the tip of Rocky Point to the southernmost tip of Cape Darby;

(C) Subdistrict 3 consists of waters from an Alaska Department of Fish and Game regulatory marker located three-fourths of a mile east of Elim village on Elim Point to the terminus of the Kwik River;

(D) Subdistrict 4 consists of waters from the terminus of the Kuiuktulik River located eight miles southwest of Koyuk to the tip of Island Point;

(E) Subdistrict 5 consist of waters from the westernmost tip of Cape Denbigh to the terminus of Junction Creek located seven miles north of Egavik;

(F) Subdistrict 6 consist of waters from the terminus of Junction Creek located seven miles north of Egavik to the tip of Black Point.

(iii) In the Port Clarence District, fish may be taken at any time except that during the period July 1 through August 15, salmon may only be taken from 6:00 p.m. Thursday until 6:00 p.m. Tuesday.

(iv) In the Norton Sound District, fish may be taken at any time except as follows:

(A) In Subdistrict 1 from June 15 through August 31, salmon may be taken only from 6:00 p.m. Monday until 6:00 p.m. Wednesday and from 6:00 p.m. Thursday until 6:00 p.m. Saturday.

(B) In Subdistricts 2 through 6, commercial fishermen may not fish for subsistence purposes during the weekly closures of the commercial salmon fishing season, except that from July 15 through August 1, commercial fishermen may take salmon for subsistence purposes seven days per week in the Unalakleet and Shaktoolik River drainages with gill nets which have a mesh size that does not exceed 4½ inches, and with beach seines.

(C) In the Unalakleet River from June 1 through July 15, salmon may be taken from 8:00 a.m. Monday until 8:00 p.m. Saturday.

(v) Salmon may only be taken by gill net, beach seine, or fishwheel.

(vi) Fish other than salmon may be taken by set gill net, drift net, beach seine, fishwheel, pot, long line, fyke net, jigging gear, spear, and lead.

(vii) A gill net may not obstruct more than one-half the width of any fish stream. A stationary fishing device may obstruct not more than one-half the width of any salmon stream.

(viii) In the Norton Sound District, kegs or buoys attached to subsistence gill nets may be any color except red.

(ix) Gill nets with a mess size of less than 4½ inches and beach seines may not be used in the Sinuk River upstream of Alaska Department of Fish and Game regulatory markers placed two miles above the mouth, in the Nome River, and in the Solomon River upstream from Alaska Department of Fish and Game regulatory markers placed near the village of Solomon.

(x) In the Nome River, no person may operate more than 50 feet of gill net in the aggregate.

(xi) In the Unalakleet River from June 1 through July 15, no person may operate more than 25 fathoms of gill net in the aggregate.

(xii) Each fishwheel must have the first initial, last name, and address of the operator plainly and legibly inscribed on the side of the fishwheel facing midstream of the river;

(xiii) For all gill nets and unattended gear that are fished under the ice, the first initial, last name, and address of the operator must be plainly and legibly inscribed on a stake inserted in the ice and attached to the gear.

(xiv) In the Norton Sound District, fish may not be taken for subsistence purposes seaward of the mouth of the Unalakleet River in an area between Alaska Department of Fish and Game regulatory markers on each side of the river to an outer line established by Alaska Department of Fish and Game regulatory markers and buoys.

(xv) In the Port Clarence District, Salmon Lake, its tributaries, and within 300 feet of Alaska Department of Fish and Game regulatory markers placed at the outlet of Salmon Lake, are closed to subsistence fishing from July 15 through August 31.

(xvi) The Nome River, from its terminus upstream for a distance of 200 yards and upstream from an Alaska Department of Fish and Game regulatory marker located near Osborn, is closed to the taking of fish.

(xvii) Except as provided in this subsection, fish may be taken for subsistence purposes without a subsistence fishing permit. A subsistence fishing permit is required as follows:

(A) In the Port Clarence District: Pilgrim River drainage including Salmon Lake;

(B) In the Norton Sound District: for net fishing in all waters from Cape Douglas to Rocky Point.

(xviii) Only one subsistence fishing permit will be issued to each household per year.

(xix) Only those residents domiciled within 20 miles of the coast between Cape Romanoff and Cape Prince of Wales and on St. Lawrence Island, may take herring and herring roe in those locations.

(xx) Only those residents domiciled in the Norton Sound-Port Clarence Area may take salmon in that area.

(3) Yukon Area. The Yukon Area includes all waters of Alaska between the latitude of Canal Point Light and the latitude of the westernmost point of the Naskonat Peninsula, including those draining into the Bering Sea.

(i) District 1 consists of that portion of the Yukon River drainage from its terminus upstream to the northern edge of the mouth of the Anuk River and all waters of the Black River including waters within one nautical mile of its terminus.

(ii) District 2 consists of that portion of the Yukon River drainage from the northern edge of the mouth of the Anuk River upstream to an Alaska Department of Fish and Game regulatory marker located at Toklik, and includes the Anuk River drainage.

(iii) District 3 consists of that portion of the Yukon River drainage from an Alaska Department of Fish and Game regulatory marker located at Toklik upstream to an Alaska Department of Fish and Game regulatory marker at the mouth of an unnamed slough three-fourths of a mile downstream from Old Paradise Village.

(iv) District 4 consists of the Yukon River from an Alaska Department of Fish and Game regulatory marker at the mouth of an unnamed slough three-fourths of a mile downstream from Old Paradise Village upstream to the western edge of the mouth of Illinois Creek at Kallands.

(A) Subdistrict 4-A consists of that portion of the Yukon River from an Alaska Department of Fish and Game regulatory marker at the mouth of an unnamed slough three-fourths of a mile downstream from Old Paradise Village upstream to the tip of Cone Point;

(B) Subdistrict 4-B consists of the Yukon River drainage from the tip of Cone Point upstream along the north bank of the river to the westernmost edge of Illinois Creek and includes the following islands: Cook, Lark, Serpentine, Louden, Fish, Dainty, Yuki, Melozi, Dasha, Straight, Kit, Fox, Hardluck, Mickey, Florence, Doyle, Chokoyik, Lady, Liner, Flora and Cronin;

(C) Subdistrict 4-C consits of the Yukon River drainage from the tip of Cone Point upstream along the south bank of the river to a point opposite the westernmost edge of Illinois Creek and includes the following islands: Cat, Hen, Jimmy, Big, Ninemile, Ham, Emerald, Edith, Kathaleen, Henry, Burns, Youngs, Weir, Clay, Large and Brant.

(v) District 5 consists of that portion of the Yukon River drainage (excluding the Tanana River drainage) from the western edge of the mouth of Illinois Creek to the U.S.-Canada border, and includes the Illinois Creek drainage.

(A) Subdistrict 5-A consists of the Yukon River drainage from a point opposite the westernmost edge of Illinois Creek upstream along the south back of the river to the easternmost edge of the Tanana River mouth and includes the following islands: Basco, Sword, Leonard, Still, Tanana and Mission;

(B) Subdistrict 5-B consists of the Yukon River drainage from the westernmost edge of Illinois Creek upstream along the north bank of the river to a point opposite the easternmost edge of the Tanana River mouth upstream along both banks of the Yukon River to the westernmost tip of Garnet Island and includes the following islands: Darvin, Little Joker, Station, Tozitna, Circle, Bull and Long;

(C) Subdistrict 5-C consists of the Yukon River drainage upstream from the westernmost tip of Garnet Island to Alaska Department of Fish and Game regulatory markers located approximately two miles downstream from Waldron Creek;

(D) Subdistrict 5-D consists of the Yukon River drainage from Alaska Department of Fish and Game regulatory markers located approximately two miles downstream from Waldron Creek upstream to the U.S.-Canada border.

(vi) District 6 consists of the Tanana River drainage to its confluence with the Yukon River.

(A) Subdistrict 6-A consists of that portion of the Tanana River drainage from its mouth upstream to the eastern edge of the mouth of the Kantishna River and includes the Kantishna River drainage.

(B) Subdistrict 6-B consists of that portion of the Tanana River drainage from the eastern edge of the mouth of the Kantishna River upstream to the eastern edge of the mouth of the Wood River and includes the Wood River drainage.

(C) Subdistrict 6-C consists of the Tanana River drainage from the eastern edge of the mouth of the Wood River upstream to the eastern edge of the mouth of the Salcha River and includes the Salcha River drainage.

(vii) Unless otherwise restricted, salmon may be taken in the Yukon Area at any time.

(viii) In the following locations, salmon may be taken only during the open weekly fishing periods of the commercial salmon fishing season and may not be taken for 24 hours before the opening and 24 hours after the closure of the commercial salmon fishing season:

(A) Districts 1, 2 and 3, except:

(*1*) Through July 19 in Districts 1 and 2 subsistence fishing periods will be established by emergency order every other weekend during commercial salmon fishing closures;

(*2*) After July 19 in District 1, except for the set net only locations, and in District 2, a 24 hour subsistence fishing period will be established by emergency order each weekend during commercial salmon fishing closures;

(B) District 4, excluding the Koyukuk and Innoko River drainages;

(*1*) In Subdistrict 4-A from June 15 through August 1, salmon may be taken from 6:00 p.m. Sunday until 6:00 p.m. Tuesday and from 6:00 p.m. Wednesday until 6:00 p.m. Friday;

(*2*) In Subdistricts 4-B and 4-C from June 15 through September 30, salmon may be taken from 6:00 p.m. Sunday until 6:00 p.m. Tuesday and from 6:00 p.m. Wednesday until 6:00 p.m. Friday;

(C) District 5, excluding the Tozitna River drainage and Subdistrict 5-D;

(D) District 6, excluding;

(*1*) The Kantishna River drainage and that portion of the Tanana River drainage upstream of the mouth of the Salcha River;

(*2*) Subdistrict 6-B, from the downstream end of Crescent Island to three miles upstream of the mouth of the Totchaket Slough, where salmon may be taken from 6:00 p.m. Friday until 6:00 p.m. Wednesday.

(ix) During any commercial salmon fishing season closure of greater than five days in duration, salmon may not be taken during the following periods in the following districts:

(A) In District 4, excluding the Koyukuk and Innoko River drainages, salmon may not be taken from 6:00 p.m. Friday until 6:00 p.m. Sunday;

(B) In District 5, excluding the Tozitna River drainage and Subdistrict 5-B, salmon may not be taken from 6:00 p.m. Sunday until 6:00 p.m. Tuesday;

(C) In Subdistrict 6-A and 6-B, excluding the Kantishna River drainage and that portion of the Tanana River drainage upstream of the mouth of the Salcha River, salmon may not be taken from 6:00 p.m. Wednesday until 6:00 p.m. Friday.

(x) In Subdistrict 6-C and that portion of the Tanana River drainage upstream to the mouth of the Salcha River, salmon may not be taken following the closure of the commercial salmon fishing season from 6:00 p.m. Monday until 6:00 p.m. Friday.

(xi) Except as otherwise provided, and except as may be provided by the terms of a subsistence fishing permit, there is no closed season on fish other than salmon.

(xii) Salmon may only be taken by gill net, beach seine, or fishwheel subject to the restrictions set forth in this section.

(xiii) In Districts 1, 2, and 3, commercial fishermen may not take salmon for subsistence purposes by gill nets larger than six-inch mesh during periods established by emergency order.

(xiv) In District 4, commercial fishermen may not take salmon for subsistence purposes during the commercial salmon fishing season by gill nets larger than six inch mesh after a date specified by emergency order issued between July 10 and July 31.

(xv) In Districts 4, 5 and 6, salmon may not be taken for subsistence purposes by drift gill nets, except as follows:

(A) In Subdistrict 4-A, upstream from the mouth of Stink Creek king salmon may be taken by drift gill nets from June 21 through July 14, and chum salmon may be taken by drift gill nets after August 2;

(B) No person may operate a drift gill net that is more than 150 feet in length during the seasons described in this section.

(xvi) Unless otherwise specified in this section, fish other than salmon may be taken only by set gill net, drift gill net, beach seine, fishwheel, long line, fyke net, dip net, jigging gear, spear, or lead, subject to the following restrictions, which also apply to subsistence salmon fishing:

(A) During the open weekly fishing periods of the commercial salmon fishing season, a commercial fisherman may not operate more than one type of gear at a time, for commercial and subsistence purposes, except that in Subdistrict 4-A, upstream from the mouth of Stink Creek, a commercial fisherman may, at any time, assist subsistence fishermen in the operation of subsistence fishing gear;

(B) The aggregate length of set gill net in use by an individual may not exceed 150 fathoms and each drift gill net in use by an individual may not exceed 50 fathoms in length;

(C) In Subdistricts 4, 5 and 6, it is unlawful to set subsistence fishing gear within 200 feet of other operating commercial or subsistence fishing gear;

(D) A gill net may obstruct not more than one-half the width of any fish stream; a stationary fishing device may obstruct not more than one-half width of any salmon stream.

(xvii) Salmon may be taken only by set gill nets in those locations described in below after July 19:

(A) Waters of the Black River including waters within one nautical mile of its terminus;

(B) Waters of Kwikluak Pass downstream of Agmulegut and the waters of Kwemeluk Pass;

(C) Waters of Alakanuk Pass downstream from the mouth of Kuiukpak Slough;

(D) Waters of Kwiguk Pass downstream to the mouth of Kawokhawik Slough;

(E) Waters of Kawanak Pass downstream from Sea Gull Point;

(F) Waters of Kwikpak Pass downstream from Sea Gull Point;

(G) Waters of Apoon Pass downstream from the mouth of the Kotlik River and waters of Okwega Pass downstream from its confluence with Apoon Pass;

(H) Waters within one nautical mile seaward from any grassland bank in District 1.

(xviii) Pike may not be taken with gill nets in the waters of the Tolovana River drainage from October 15 through April 14.

(xix) Each fishwheel must have the first initial, last name, and address of the operator plainly and legibly inscribed on the side of the fishwheel facing midstream of the river.

(xx) For all gill nets and unattended gear that are fished under the ice, the first initial, last name, and address of the operator must be plainly and legibly inscribed on a stake inserted in the ice and attached to the gear.

(xxi) The following locations in the upper Yukon River drainage are closed to subsistence fishing, except that whitefish and suckers may be taken under the authority of a subsistence fishing permit designating measures for the protection of other fish: the following streams and within 500 feet of their mouths: Birth Creek; Dall River, June 10 through September 10;

(xxii) The following drainages located north of the main Yukon River are closed to subsistence fishing:

(A) Kanuti River, upstream from a point five miles downstream of the state highway crossing;

(B) Fish Creek, upstream from the mouth of Bonanza Creek;

(C) Bonanza Creek;

(D) Jim River, including Prospect Creek and Douglas Creek;

(E) South Fork of the Koyukuk River system upstream from the mouth of Jim River;

(F) Middle Fork of the Koyukuk River system upstream from the mouth of the North Fork;

(G) North Fork of the Chandalar River system upstream from the mouth of Quartz Creek.

(xxiii) The main Tanana River and its adjoining sloughs are closed to subsistence fishing between the mouth of the Salcha River and the mouth of the Gerstle River, except that salmon may be taken in the area upstream of the Richardson Highway bridge to the mount of Clearwater Creek after November 20.

(xxiv) Waters of the Tanana River drainage are closed to the subsistence taking of pike between the mouth of the Kantishna River and Delta River at Black Rapids on the Richardson Highway and Cathedral Rapids on the Alaska Highway, except that pike may be taken for subsistence purposes in the Tolovana River drainage upstream from its confluence with the Tanana River.

(xxv) The Delta River is closed to subsistence fishing, except that salmon may be taken after November 20.

(xxvi) The following locations are closed to subsistence fishing:

(A) The following rivers and creeks are within 500 feet of their mouths: Delta Clearwater River (Clearwater Creek at 64°06′ N. lat., 145°34′ W. long), Richardson Clearwater Creek (Clear Creek at 64°14′ N. lat., 146°16′ W. long), Goodpaster River, Chena River, Little Chena River, Little Salcha River, Blue Creek, Big Salt River, Shaw Creek, Bear Creek, McDonald Creek, Moose Creek, Hess Creek, and Beaver Creek;

(B) Ray River and Salcha River upstream of a line between Alaska Department of Fish and Game regulatory markers located at the mouth of the rivers;

(C) Deadman, Jan, Boleo, Birch, Lost, Harding, Craig, Fielding, Two-Mile, Quartz, and Little Harding lakes;

(D) Piledriver and Badger (Chena) sloughs.

(xxvii) The following waters are closed to the taking of chum salmon from August 15 through December 31:

(A) Toklat River.

(B) Kantishna River from the mouth of the Toklat River to its confluence with the Tanana River.

(xxviii) Except as provided in this section, fish may be taken for subsistence purposes without a subsistence fishing permit.

(xxix) A subsistence fishing permit is required as follows:

(A) For the Yukon River drainage from the mouth of Hess Creek to the mouth of the Dall River;

(B) For the Yukon River drainage from Alaska Department of Fish and Game regulatory markers placed near the upstream mouth of 22 Mile Slough upstream to the U.S.—Canada border;

(C) For the Tanana River drainage above the mouth of the Wood River;

(D) For whitefish and suckers in the waters listed;

(E) For the taking of pike in waters of the Tolovana River drainage upstream of its confluence with the Tanana River;

(F) For the taking of salmon in Subdistricts 6-A and 6-B.

(xxx) In addition to the subsistence fishing permit conditions, permits issued for fish other than salmon may also designate restrictive measures for the conservation of salmon.

(xxxi) Only one subsistence fishing permit will be issued to each household per year.

(xxxii) In addition to the subsistence fishing permit conditions, permits issued for the taking of salmon in Subdistricts 6-A and 6-B must also contain the following requirements:

(A) Salmon may be taken only by set gill net or fishwheel. No household may operate more than one fishwheel.

(B) Each person subsistence fishing shall keep accurate daily records of his/her catch, the number of fish taken by species, location and date of the catch, and other information that the Alaska Department of Fish and Game may require for management or conservation purposes.

(C) In that portion of Subdistrict 6-B three miles or more upstream of the mouth of Totchaket Slough, each permittee shall report the number of salmon taken to the State once each week, or as specified on the permit. In the remainder of Subdistrict 6-B and in Subdistrict 6-A, each permittee shall report the total number of salmon taken to the Alaska Department of Fish and Game no later than October 31.

(xxxiii) Only those residents domiciled in rural locations in the Yukon Area, as determined by the Federal Subsistence Board, including the community of Stebbins, may take salmon in the Yukon Area.

(xxxiv) Only those residents domiciled in rural locations in the Yukon River Drainage, as determined by the Federal Board including the communities of Stebbins, Scammon Bay, Hooper Bay, and Chevak may take Yukon River Fall chum salmon for subsistence purposes.

(xxxv) Only those residents domiciled in rural locations in the Yukon Area, as determined by the Federal Subsistence Board, may take freshwater fish species, including sheefish, whitefish, lamprey, burbot, sucker, grayling, pie, char, and blackfish, in the Yukon Area.

(xxxvi) Only those residents domiciled within 20 miles of the coast between the terminus of the Black River and the westernmost point of the Naskonat Peninsula may take herring and herring roe in that location.

(xxxvii) In subdistricts 5-A, 5-B, 5-C, and that portion of Subdistrict 5-D downstream from Long Point, no person may possess salmon taken for subsistence purposes during a commercial fishing period, unless the dorsal fin has been immediately removed from the salmon. A person may not sell or purchase salmon from which the dorsal fin has been removed.

(xxviii) An Alaska Commercial Fisheries Entry Commission salmon permit holder registered for the set net only locations may not use drift gill nets for the subsistence taking of salmon in Districts 1, 2, and 3.

(xxxix) A commercial salmon fisherman who is registered for Districts 1, 2, or 3 may not take salmon for subsistence purposes in any other district located downstream from Old Paradise Village.

(xl) Subsistence salmon harvest limits in Subdistrict 6-C are 750 king salmon and 5,000 chum salmon taken through August 15 and 5,200 chum and coho salmon combined taken after August 15. When either the king or chum salmon harvest limit for periods before August 16 has been taken, the subsistence salmon fishing season in Subdistrict 6-C will close. A later season will open after August 15 to allow the taking of the harvest limit for periods after August 15. If the chum salmon harvest limit has not been obtained through August 15, the remaining harvest will not be added to the chum salmon harvest level for periods after August 15.

(xli) Subsistence salmon fishing seasons and weekly fishing periods for Subdistrict 6-C are as follows:

(A) Salmon may be taken at any time except salmon may not be taken for 24 hours before the opening and after the closing of the commercial salmon fishing seasons and during closed weekly commercial salmon fishing periods;

(B) Weekly subsistence salmon fishing periods that follow closures of the commercial salmon fishing seasons will be established by emergency order;

(C) The annual harvest limit for the holder of a Subdistrict 6-A or 6-B subsistence salmon fishing permit is 60 chinook salmon and 500 chum salmon for the period through August 15 of a year, and 2,000 chum and coho salmon combined for the period after August 15. Upon request, permits for additional salmon may be issued by the department.

(D) Unless otherwise provided, from June 20 through September 30, open subsistence salmon fishing periods are concurrent with open commercial salmon fishing periods. During closures of the commercial salmon fishery, open subsistence salmon fishing periods are as specified in 5 Alaska Administrative Code 05.367.

(E) In the Kantishna River drainage, the open subsistence salmon fishing periods are seven days per week.

(F) In Subdistrict 6-B from the downstream end of Crescent Island to a line three miles upstream from the mouth of the Totchaket Slough, the open subsistence salmon fishing periods are from 6:00 p.m. Friday through 6:00 p.m. Wednesday.

(xlii) Adjustments may have to made to be the subsistence salmon fishing seasons and fishing periods to protect healthy populations.

(xliii) Salmon may be taken only by set gill net or fishwheel. No person may operate a gill net having a mesh size larger than six inches after a date specified by emergency order issued between July 5 through July 25.

(xliv) Subsistence fishermen taking salmon in Subdistrict 6-C shall report their salmon catches at designated Alaska Department of Fish and Game check stations by the end of each weekly fishing period. Immediately after salmon have been taken, catches must be recorded on a harvest form provided by the department.

(xlv) The annual possession limit for the holder of a Subdistrict 6-C subsistence salmon fishing permit is 10 king salmon and 75 chum salmon for periods through August 15 and 75 chum and coho salmon for periods after August 15.

(4) Kuskokwim Area. (i) The Kuskokwim Area consists of all waters of Alaska between the latitude of the westernmost point of the Naskonat Peninsula and the latitude of the southernmost tip of Cape Newenham, including the waters of Alaska surrounding Nunivak and St. Matthew Islands and those waters draining into the Bering Sea.

(ii) District 1 is that portion of the Kuskokwin River upstream from a line from Apokak Slough (60°8′ North latitude, 162°12′ West longitude) to the southernmost tip of Eek Island to Popokamiut (60°4′ North latitude, 162°28′ West longitude) to a line between Alaska Department of Fish and Game regulatory markers located just upstream of the mouth of Bogus Creek.

(iii) District 2 is that portion of the Kuskokwim River from Alaska Department of Fish and Game regulatory markers located at the High Bluffs upstream to the Alaska Department of Fish and Game regulatory markers at the downstream edge of Chuathbaluk.

(iv) District 4 consists of Kuskokwim Bay between Alaska Department of Fish and Game regulatory markers placed at the westernmost edge of the mouth of the Arolik River.

(v) District 5 consists of that portion of Goodnews Bay inside a line between Alaska Department of Fish and Game regulatory markers placed near the bay entrance and a line between Alaska Department of Fish and Game markers placed near the mouth of the Ufigag River and on the opposite shore near the mouth of the Tunulik River.

(vi) Unless otherwise restricted, salmon may be taken in the Kuskokwim area at any time.

(vii) In District 1 and in those waters of the Kuskokwim River between Districts 1 and 2, excluding the Kuskokuak Slough, salmon may be taken at any time except salmon may not be taken for 16 hours before, during and for six hours after, each open commercial salmon fishing period for District 1;

(viii) In District 1, Kuskokuak Slough only, salmon may be taken at any time except:

(A) From June 1 through July 31, salmon may not be taken for 24 hours before and during each open commercial salmon fishing period in the district.

(B) From August 1 through August 31, salmon may not be taken for 15 hours before and during each open commercial salmon fishing period in the district.

(ix) In Districts 4 and 5, salmon may be taken at any time except from June 1 through September 8, salmon may not be taken for 24 hours before, during, and 6 hours after each open commercial salmon fishing period in each district.

(x) Except as otherwise provided, there is no closed season on fish other than salmon.

(xi) In District 2, and anywhere in tributaries that flow into the Kuskokwim River within that district, salmon may be taken at any time, except that from June 1 through September 8 salmon may not be taken for 24 hours before, during, and six hours after each open commercial salmon fishing period in the district.

(xii) Salmon may only be taken by gill net, beach seine, or fishwheel subject to the restrictions set forth in this chapter, except that salmon may also be taken by spear in the Holitna River drainage.

(xiii) The aggregate length of set gill nets or drift gill nets in use by any individual for taking salmon may not exceed 50 fathoms.

(xiv) Fish other than salmon may only be taken by set gill net, drift gill net, beach seine, fishwheel, pot, long line, fyke net, dip net, jigging gear, spear, or lead.

(xv) Each subsistence gill net operated in tributaries of the Kuskokwim River must be attached to the bank, fished substantially perpendicular to the bank and in a substantially straight line.

(xvi) In that portion of the Kuskokwim River drainage from the north end of Eek Island upstream to the mouth of the Kolmakof River, no part of a set gill net located within a tributary to the Kuskokwim River may be set or operated within 150 feet of any part of another set gill net.

(xvii) A gill net may obstruct not more than one-half the width of any fish stream. A stationary fishing device may obstruct not more than one-half the width of any salmon stream.

(xviii) Kegs or buoys attached to subsistence gill nets may be any color except red during any open weekly commercial salmon fishing period.

(xix) The maximum depth of gill nets is as follows:

(A) Gill nets with six-inch or smaller mesh may not be more than 45 meshes in depth;

(B) Gill nets with greater than six-inch mesh may not be more than 35 meshes in depth;

(xx) In addition to the previously stated requirements,

(A) Each fishwheel must have the first initial, last name, and address of the operator plainly and legibly inscribed on the side of the fishwheel facing midstream of the river;

(B) For all gill nets and unattended gear that are fished under the ice, the first initial, last name, and address of the operator must be plainly and legibly inscribed on a stake inserted in the ice and attached to the gear.

(xxi) The Goodnews River is closed to the subsistence taking of fish by nets east of a line between Alaska Department of Fish and Game regulatory markers placed near the mouth of the Ufigag River and Alaska Department of Fish and Game regulatory marker placed near the mouth of the Tunulik River 24 hours before, during, and six hours after each open commercial salmon fishing period.

(xxii) The Kanektok River is closed to the subsistence taking of fish by nets upstream of Alaska Department of Fish and Game regulatory markers placed near the mouth 24 hours before, during the six hours after each open commercial salmon fishing period.

(xxiii) The Arolik River is closed to the subsistence taking of fish by nets upstream of Alaska Department of Fish and Game regulatory markers placed near the mouth 24 hours before, during, and six hours after each open commercial salmon fishing period.

(xxiv) Fish may be taken for subsistence purposes without a subsistence fishing permit.

(xxv) Only those residents domiciled in the Kuskokwim Area, except those persons residing on the United States military installation located on Cape Newenham, Sparevohn USAFB, and Tatalina USAFB, may take salmon for subsistence purposes in the Kuskokwim Area.

(xxvi) Only those residents domiciled in the communities of Chevak, Newtok, Tununak, Toksook Bay, Nightmute, Chefornak, Kipnuk, Mekoryuk, Kwigillingok, Kongiganak, Eek, and Tuntutuliak may take for subsistence purposes Pacific cod in the Kuskokwim area.

(xxvii) Only those residents domiciled within 20 miles of the coast between the westernmost tip of the Naskonant Peninsula and the terminus of the Ishowik River and on Nunivak Island may take for subsistence purposes herring and herring roe in those locations.

(4) Bristol Bay Area. (i) The Bristol Bay Area consists of all waters of Bristol Bay including drainage enclosed by a line from Cape Newenham to Cape Menshikof.

(ii) Districts and Sections for salmon, bottomfish, and other finfisheries are described below.

(A) Nushagak District: All waters of Nushagak Bay north of a line from 58°33′48″ North latitude, 158°47′12″ West longitude (Nichols Hills) to 58°39′24″ North latitude, 158°19′12″ West longitude (Etolin Point):

(*1*) Igushik Section: All waters of Nushagak Bay bound by a line from 58°33′48″ North latitude, 158°47′12″ West longitude to 58°36′18″ North latitude, 158°34′36″ West longitude to 58°44′54″ North latitude, 158°41′24″ West longitude to 58°45′48″ North latitude, 158°46′36″ West longitude;

(*2*) Snake River Section: All waters bound by a line from 58°52′25″ North latitude, 158°43′10″ West longitude to 58°44′54″ North latitude, 158°41′24″ West longitude to 58°45′48″ North latitude, 158°46′36″ West longitude.

(*3*) Nushagak Section: All waters of the Nushagak district not described in paragraph (f)(5)(ii)(A) (*1*) and (*2*) of this section.

(B) Naknek-Kvichak District: All waters of Kvichak Bay north and east of Loran C line 9990-Y-32430 and divided as follows:

(*1*) Kvichak Section: All waters of Kvichak Bay north and east of Loran C line 9990-Y-32430 and north and west of a line from 58°38′30″ North latitude, 157°22′14″ West longitude to the outer end of the Libbyville dock then along the dock to shore.

(*2*) Naknek Section: All waters of the Naknek-Kvichak District not described in paragraph (f)(5)(ii)(A)(*1*) of this section.

(C) Egegik District: All waters north of Loran C line 9990-Y-32630, east of Loran C line 9990-Z-45140, and south of Loran C line 9990-Y-32570.

(D) Ugashik District: All waters south of Loran C line 9990-Y-32782 and east of a line connecting an Alaska Department of Fish and Game regulatory marker at Cape Menshikof (Loran C coordinates 9990-Y-32891 and 9990-Z-45229) with a point at the intersection of Loran C lines 9990-Y-32782 and 9990-Z-45150).

(E) Togiak District: All waters north of a line from Cape Newenham to Cape Pierce then to Right Hand Point then to Kulukak Point.

(*1*) Togiak River Section: Waters of Togiak Bay within a line from a marker on the near shore near Mt. Aeolus to a marker at Rocky Point;

(*2*) Kulukak Section: Waters of Kulukak Bay within a line bearing in a westerly direction from a marker at Kulukak Point to a marker on the shore at 159°45′ West longitude.

(*3*) Osviak Section: Waters within a line Estu Point and Asigyupak Spit at 58°41′ North latitude, 161°18′ West longitude;

(*4*) Matogak Section: Waters of Hagemeister Strait within a line between Estus Point and Tongue Point:

(*5*) Cape Peirce Section: Waters within a line from Cape Newenham to Cape Peirce.

(iii) The Districts and Sections for herring, herring spawn on kelp, and capelin fisheries are:

(A) The Togiak District consists of all waters of Alaska between the longitude of the tip of Cape Constantine and the longitude of the tip of Cape Newenham. Sections are as follows.

(*1*) Kulukak Section: All waters between the longitude of the tip of Cape Constantine and the longitude of the tip of Right Hand Point.

(*2*) Nanavachak Section: All waters between the longitude of the tip of Right Hand Point and a line extending south from the westernmost tip of Anchor Point;

(*3*) Togiak Section: All waters between a line extending south from the westernmost tip of Anchor Point and the longitude of the terminus of the Quigmy River;

(*4*) Hagemeister Section: All waters between the longitude of the terminus of the Quigmy River and the longitude of the tip of Asigyukpak Spit;

(5) Pyrite Point Section: All waters between the longitude of Asigyukpak Spit and the longitude of Cape Pierce;

(6) Cape Newenham Section: All waters between the longitude of the tip of Cape Pierce and the longitude of the tip of Cape Newenham.

(B) The Bay District consists of all waters of the Bristol Bay Area east of the longitude of the southernmost tip of Cape Constantine.

(C) The General District consists of all waters of the Bristol Bay Area west of the longitude of the southernmost tip of Cape Newenham.

(iv) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, fish may be taken at any time in the Bristol Bay Area.

(v) Within the waters of a district open during the commercial salmon fishing season, salmon may be taken only during open commercial salmon fishing periods. In the open waters of the Nushagak District, provision shall be made for subsistence salmon fishing by emergency order whenever there are commercial salmon fishing closures of five or more days. During these emergency order openings,

(A) Set gill nets may not be more than 10 fathoms in length;

(B) No set gill net may be set or operated within 450 feet of another set gill net, and

(C) Catches during the emergency order openings must be reported to the Dillingham Alaska Department of Fish and Game office within 24 hours after the closure.

(vi) From October 1 through December 31, sockeye salmon may be taken along a 100 yard length of the west shore of Naknek Lake near the outlet to the Naknek River as marked by Alaska Department of Fish and Game regulatory markers.

(vii) In the Nushagak District from an Alaska Department of Fish and Game regulatory marker located two statute miles south of Bradford Point to an Alaska Department of Fish and Game regulatory marker located at Red Bluff on the west shore of the Wood River, from 9:00 a.m. June 16 through 9:00 a.m. July 17, salmon may be taken only from 9:00 a.m. Monday to 9:00 a.m. Tuesday, 9:00 a.m. Wednesday to 9:00 a.m. Thursday, and 9:00 a.m. Friday to 9:00 a.m. Saturday.

(viii) In the Naknek, Egegik, and Ugashik Rivers from 9:00 a.m. June 23 through 9:00 a.m. July 17, salmon may be taken only from 9:00 a.m. Tuesday to 9:00 a.m. Wednesday and 9:00 a.m. Saturday to 9:00 a.m. Sunday.

(ix) Within any district, salmon, herring, and capelin may only be taken by drift and set gill nets.

(x) Outside the boundaries of any district, salmon may only be taken by set gill net, except that salmon may also be taken by spear in the Togiak River excluding its tributaries.

(xi) The maximum lengths for set gill nets used to take salmon are as follows:

(A) In the Naknek, Egegik and Ugashik Rivers, in the Nushagak District, and in Naknek Lake, set gill nets may not exceed 10 fathoms in length;

(B) In the remaining waters of the area, set gill nets may not exceed 25 fathoms in length.

(xii) No part of a set gill net may be operated within 300 feet of any part of another set gill net, except in the Nushagak District from the Alaska Department of Fish and Game regulatory marker two statute miles below Bradford Point to a marker at Red Bluff on the west shore of Wood River, no part of a set gill net may be operated within 100 feet of any part of another set gill net.

(xiii) No set gill net may obstruct more than one-half the width of a stream.

(xiv) Each set gill net must be staked and buoyed.

(xv) No person may operate or assist in operating subsistence salmon net gear while simultaneously operating or assisting in operating commercial salmon net gear.

(xvi) Fish, other than salmon, herring and capelin may be taken by gear previously listed unless restricted under the terms of a subsistence fishing permit.

(xvii) Herring spawn on kelp may be taken only by hand picking and hand operated rakes.

(xviii) During closed commercial herring fishing periods, gill nets used for the subsistence taking of herring or capelin may not exceed 25 fathoms in length.

(xix) Except for the western shore of the Newhalen River, waters used by salmon are closed to the subsistence taking of fish within 300 feet of a stream mouth.

(xx) Gill nets are prohibited in that portion of the Naknek River upstream from Sovonaski;

(xxi) Subsistence fishing with nets is prohibited in the following waters and within one-fourth mile of the terminus of those waters during the period from September 1 through June 14:

Lower Talarik Creek
Middle Talarik Creek
Upper Talarik Creek
Pete Andrew Creek
Zacker Creek
Newhalen River
Roadhouse Creek
Alexi Creek
Tazimina River
Young's Creek
Chekok Creek
Tomokok Creek
Nick G. Creek
Copper River
Kakhonak River
Gibraltar River
Dennis Creek
Belinda Creek

(xxii) Metervik Bay is closed to herring fishing north of a line from an Alaska Department of Fish and Game regulatory marker at 58°49′6″ North latitude, 159°47′15″ West longitude to an Alaska Department of Fish and Game regulatory marker at 58°49′58″ North latitude, 159°45′45″ West longitude. This closure does not apply to the taking of herring spawn on kelp.

(xxiii) Ungalikthluk Bay is closed to the taking of herring north of a line from an Alaska Department of Fish and Game regulatory marker at Rocky Point (58°53′15″ North latitude, 160°14′15″ West longitude) to an Alaska Department of Fish and Game regulatory marker at 58°51′54″ North latitude, 160°9′45″ West longitude. This closure does not apply to the taking of herring spawn on kelp.

(xxiv) Salmon, trout and char may only be taken under authority of a subsistence fishing permit.

(xxv) Only one subsistence fishing permit may be issued to each household per year.

(xxvi) Subsistence salmon fishing permits for the Naknek River drainage will be issued only through the Alaska Department of Fish and Game King Salmon office.

(xxvii) Only those residents domiciled in the Nushagak District and freshwater drainage flowing into the district may take salmon in the district and those drainage.

(xxviii) Only those residents domiciled in the Togiak District, freshwater drainage flowing into the district, and the community of Manokotak may take salmon and freshwater fish species in the district and those drainage.

(xxix) Only those residents domiciled in the Naknek and Kvichak River drainage may take salmon in the Naknek River drainage.

(xxx) Only those residents domiciled in the Iliamna-Lake Clark drainage may take salmon in the Iliamna-Lake Clark drainage.

(xxxi) Only those residents domiciled in the communities of Togiak, Twin Hills, Manokotak, Aleknagik, Dillingham, Clarks Point, and Ekuk may take herring and herring roe on kelp in the waters of the Togiak District which consist of all waters of Alaska between the longitude of the tip of Cape Constantine and the longitude of the tip of Cape Newenham.

(xxxii) After August 20, no person may possess coho salmon for subsistence purposes in the Togiak River Section and the Togiak River drainage unless the head has been immediately removed from the salmon. It is unlawful to purchase or sell coho salmon from which the head has been removed.

(xxxiii) The total annual possession limit for a subsistence salmon fishing permit issued under this section is 200 sockeye salmon.

(6) Aleutian Islands Area. (i) The Aleutian Islands Area includes all waters of Alaska west of the longitude of the tip of Cape Sarichef, east of 172° E. long., and south of 54°36′ N. lat.

(A) Akutan District: All waters between Scotch Cap and Cape Sarichef Light and extending west to and including Akutan Pass. South of Scotch Cap, the eastern boundary of the district is a line extending from Scotch

Cap through the easternmost tip of Ugamak Island.

(B) Unalaska District: All waters west of Akutan Pass to and including Umnak Pass

(*1*) Beaver Inlet Section: All waters between Cape Sedanka and Cape Kalekta and including Unalga Island;

(*2*) Unalaska Bay Section: All waters between Cape Kaalekta and Cape Kovrizhka;

(*3*) Makushin Bay Section: All waters between Cape Kovirzhka and Spray Cape;

(*4*) Kashega Bay Section: All waters between Spray Cape and Konets Head:

(*5*) Southern Section: All waters between Konets Head and Cape Sedanka.

(C) Umnak District: All waters west of Umnak Pass to and including Atka Pass.

(D) Adak District: All waters west of Atka Pass to the terminus of the Aleutian Islands.

(ii) Salmon may be taken by seine and gill net, or with gear specified on a subsistence fishing permit.

(iii) Fish other than salmon may be taken by gear previously, unless restricted under the terms of a subsistence fishing permit.

(iv) The waters of Unalaska Lake (at Unalaska Village), its drainage and the outlet stream, and within 500 yards of its terminus are closed to subsistence fishing.

(v) The Adak District is closed to the taking of salmon.

(vi) Salmon, trout and char may be taken only under the terms of a subsistence fishing permit, except that a permit is not required in the Akutan, Umnak and Adak Districts. Not more than 250 salmon may be taken for subsistence purposes unless otherwise specified on the subsistence fishing permit. A record of subsistence caught fish must be kept on the reverse side of the permit. The record must be completed immediately upon taking subsistence caught fish and must be returned to the local representative of the Alaska Department of Fish and Game no later than October 31.

(7) **Alaska Peninsula Area.** (i) The Alaska Peninsula Area includes all Pacific Ocean waters of Alaska between a line extending southeast (135°) from the tip of Kupreanof Point and the longitude of the Tip of Cape Sarichef, and all Bering Sea waters of Alaska east of the longitude of the tip of Cape Sarichef and south of the latitude of the tip of Cape Menshikof.

(ii) Salmon may be taken at any time except within 24 hours before and within 12 hours following each open weekly commercial salmon fishing period within a 50 mile radius of the area open to commercial salmon fishing, or as may be specified on a subsistence fishing permit.

(iii) Fish other than salmon may be taken at any time unless restricted under the terms of a subsistence fishing permit.

(iv) Salmon may be taken by seine and gill net, or with gear specified on a subsistence fishing permit.

(v) Fish other than salmon may be taken by gear previously listed, unless restricted under the terms of a subsistence fishing permit.

(vi) No set gill net may exceed 100 fathoms in length.

(vii) The following waters are closed to subsistence fishing for salmon:

(A) Russell Creek and Nurse Lagoon and within 500 yards outside the mouth of Nurse Lagoon;

(B) Trout Creek and within 500 yards outside its mouth;

(c) Inshore of a line from the Pacific Pearl dock to Black Point, including the inlet and Humboldt Creek.

(viii) Salmon, trout and char may be taken only under the authority of a subsistence fishing permit. A record of subsistence caught fish must be kept on the reverse side of the permit. The record must be completed immediately upon taking subsistence caught fish and must be returned to the local representative of the Alaska Department of Fish and Game no later than October 31.

(8) **Chignik Area.** (i) The Chignik Area includes all waters of Alaska on the south side of the Alaska Peninsula enclosed by 156°20′13″ W. long., (the longitude of the southern entrance to Imuya Bay near Kilokak Rocks) and a line extending southeast (135°) from the tip of Kupreanof Point.

(ii) Salmon may be taken by seines and gill nets, or with gear specified on a subsistence fishing permit, except that in Chignik Lake salmon may not be taken with purse seines.

(iii) Fish other than salmon may be taken by gear previously listed, unless restricted under the terms of a subsistence fishing permit.

(iv) Salmon may not be taken in the Chignik River, upstream from the Alaska Department of Fish and Game weir site or counting tower, in Black Lake, or any tributary to Black and Chignik Lakes.

(v) Salmon, trout and char may only be taken under the authority of a subsistence fishing permit. A record of subsistence caught fish must be kept on the reverse side of the permit. The record must be completed immediately upon taking subsistence caught fish and must be returned to the local representative of the Alaska Department of Fish and Game no later than October 31.

(vi) From June 10 through September 30, commercial fishing license holders may not subsistence fish for salmon.

(9) Kodiak Area. (i) The Kodiak Area includes all waters of Alaska south of a line extending east from Cape Douglas (58°52′ N. lat.), west of 150° W. long., north of 55°30′ N. lat.; and east of the longitude of the southern entrance of Imuya Bay near Kilokak Rocks (156°20′13″ W. long.).

(ii) Salmon may be taken for subsistence purposes from 6:00 a.m. until 9:00 p.m. from January 1 through December 31, with the following exceptions:

(A) From June 1 through September 15, salmon seine vessels may not be used to take subsistence salmon for 24 hours before, during, and for 24 hours after any open commercial salmon fishing period;

(B) From June 1 through September 15, purse seine vessels may be used to take salmon only with gill nets and no other type of salmon gear may be on board the vessel.

(iii) Fish other than salmon may be taken at any time unless restricted by the terms of a subsistence fishing permit.

(iv) Unless restricted by this section or under the terms of a subsistence fishing permit, fish may be taken by gear previously listed.

(v) Salmon may be taken only by gill net and seine.

(vi) Subsistence fishermen must be physically present at the net at all times the net is being fished.

(vii) The following locations are closed to the subsistence taking of salmon:

(A) All waters of Mill Bay and all those waters bounded by a line from Spruce Cape to the northernmost point of Woody Island, then to the northernmost point of Holiday Island, then to a point on Near Island opposite the Kodiak small boat harbor entrance and then to the small boat harbor entrance;

(B) All freshwater systems of Little Afognak River and Portage Creek drainage in Discoverer Bay;

(C) All waters closed to commercial salmon fishing in the Barbara Cove, Chiniak Bay, Saltery Cove, Pasagshak Bay, Monashka Bay and Anton Larsen Bay, and all waters closed to commercial salmon fishing within 100 yards of the terminus of Selief Bay Creek and north and west of a line from the tip of Last Point to the tip of River Mouth Point in Afognak Bay;

(D) All waters 300 yards seaward of the terminus of Monks Creek;

(E) From August 15 through September 30, all waters 500 yards seaward of the terminus of Little Kitoi Creek;

(F) All freshwater systems of Afognak Island;

(G) All waters of Ouzinkie Harbor north of a line from 57°55′10″ N. lat., 152°36′ W. long. to 57°55′03″ N. lat., 152°29′20″ W. long.

(viii) A subsistence fishing permit is required for taking salmon, trout and char for subsistence purposes. A subsistence fishing permit is required for taking herring and bottomfish for subsistance purposes during the commercial herring sac roe season from May 1 through June 30. All subsistence fisherman shall keep a record of the number of subsistence fish taken each year. The number of subsistence fish taken shall be recorded on the reverse side of the permit. The record must be completed immediately upon landing subsistence caught fish and must be returned to the local representative of the Alaska Department of Fish and

Game by February 1 of the year following the year the permit was issued.

(ix) only those residents domiciled in the Kodiak Island Borough, except those residing on the Kodiak Coast Guard base, may take salmon in the Kodiak Area. This restriction does not apply to the Mainland District, all waters along the southside of the Alaska Peninsula bounded by the latitute of Cape Douglas (58° 52′ North latitude) mid-stream Shelikof Strait, and west of the longitude of the southern entrance of Kmuya Bay near Kilokak Rocks (57°11′22″ North latitude, 156°20′30″ West longitude.)

(10) Cook Inlet Area. (i) The Cook Inlet Area includes all waters of Alaska enclosed by a line extending east from Cape Douglas (58°52′ N. lat) and a line extending south from Cape Fairfield (148°40′ W. long.).

(A) Northern District: North of a line extending from Boulder Point at 60°46′23″ N. lat., to Shell Platform C, then to a point on the west shore at 60°46″23″ N. lat.

(*1*) Eastern Subdistrict: All waters south of the latitute of Point Possession, north of the latitude of Boulder Point, and east of a line from Shell Platform C to a point at 61°02′40″ N. Lat., 150°40′ W. long.;

(*2*) In addition to paragraph (f)(10)(i)(A) (*1*) of this section, the Tyonek subdistrict includes those waters of the Northern District within mean lower tide from a point one mile south of the southern edge of the Chuitna River south of the easternmost tip of Granite Point.

(*3*) General Subdistrict: All waters of the Northern District not specified above.

(B) Central District: All waters between a line extending from Boulder Point at 60°46′23″ N. lat., to Shell Platform C, to a point on the west shore at 60°46′23″ N. lat., and the latitute of Anchor Point Light (59°46′12″ N. lat.)

(*1*) Kustatan Subdistrict: All waters within a line from the Drift River terminal to the South Kalgin Island Light at 60°20′48″ N. lat., 152°04′30″ W. long., northerly along the west side of Kalgin Island to Northwest Point at 60°31′15″ N. lat., 155°55′45″ W. long., bearing 43° to Shell Platform C, to a point on the west shore at 60°46′23″ N. lat., excluding the waters of the Kalgin Island Subdistrict;

(*2*) Upper Subdistrict: All waters within a line from Boulder Point to shell Platform C, then bearing 223° to Northwest Point at 60°31′15″ N. lat., 151°55′45″ W. long. then following the eastern shore of Kalgin island to the South Kalgin Island Light at 60°20′48″ N. lat., 152°09′42″ W. long., then bearing 142° to the Niniichik small boat harbor, excluding the waters of the Kalgin Island Subdistrict;

(*3*) Kalgin Island Subdistrict: All waters within a line encompassing Kalgin Island within one mile of mean lower low water as delineated by the most recent U.S. Coast and Geodetic Survey chart number 8553;

(*4*) Lower Subdistrict: Waters between a line extending from Ninilchik small boat harbor. then bearing 136° to the South Kalgin Light at 60°20′48″ N. lat., 152°09′42″ W. long., then bearing 236° to a point one nautical mile from the bluff on the northwestern shore of Chisik Island at 60°10′30″ N. lat., 152°35′ W. long., then in a southerly direction one nautical mile seaward of the mean high water line to a point at the southern end of the silver salmon set-net area at 59°58′5″ N. lat., then bearing 270° to the shore, and the latitude of the Anchor Point Light, excluding the waters of the Chinta Bay and the Kalgin Islands Subdistricts;

(*5*) Western Subdistricts: Water within a line from the Drift River terminal to the South Kalgin Light at 60°20′48″ N. lat., 152°09′42″ W. long., then bearing 236° to a point one nautical mile from the bluff on the northeast shore of Chisik Island at 60°10′30″ N. lat., 152°35′ W. long., then in a southerly direction one nautical mile seaward of the mean high water line to a point at the southern end of the silver salmon set-net area at 59°58′05″ N. lat., then bearing 270° to the shore, excluding the waters of the Kalgin Island Subdistrict;

(*6*) Chinitna Bay Subdistrict: All waters in Chinitna Bay west of a line from Spring Point to Sea Otter Point.

(C) Southern District: All waters enclosed by a line from the westernmost tip of Anchor Point west to 59°46′15″ N. lat., 162°20′ W. long., then south to

59°03′25″ N. lat., 152°20′ W. long., then in a northeasterly direction to the tip of Cape Elizabeth, then from the tip of Cape Elizabeth to the tip of Point Adam;

(*1*) Port Graham Subdistrict: All waters east of the longitude of Point Bede and south of the latitude Point Pogibshi;

(*2*) Seldovia Bay Subdistrict: All waters south of a line from Point Naskowhak, to Seldovia Point;

(*3*) Barbara Creek Subdistrict: All waters between the longitudes of Seldovia Point and Nubble Point and south of 59°30′ N. lat.;

(*4*) Tutka Bay Subdistrict: All waters east of the longitude of Nubble Point and south of the latitude of Anisom Point on the eastern shore of Eldred Passage at 59°32′06″ N. lat., 141°27′55″ W. long., including Kasitnsa Bay;

(*5*) Humpy Creek Subdistrict: All waters east of a line from an Alaska Department of Fish and Game marker on Glacier Spit at 59°38′ N. lat., 151°12′31″ W. long., to the Northshore Subdistrict line at 59°38′15″ N. lat., 151°18′45″ W. long., and southeast of a line from that point on the Northshore Subdistrict line at 59°38′15″ N. lat., 151°18′45″ W. long., to a point north of Chugachik Island at 59°45′ N. lat., 151°02′36″ S. long., to a point on the mainland at 59°44′30″ N. lat., 151°02′06″ W. long.

(*6*) Northshore Subdistrict: All waters north of a line from Coal Point to a point north of Chugachik Island at 59°45′ N. lat., 151°02′36″ W. long., then northwesterly to a marker one-half statute mile southwest of the terminus of Swift Creek;

(*7*) China Poot Subdistrict: All waters south of a line from Peterson Point at 59°35′48″ N. lat., 151°16′24″ W. long., to Coal Point on the tip of the Homer Spit at 59°36′06″ N. lat., 151°24′30″ W. long. to 59°32′06″ N. lat., 151°33′05″ W. long. to Anisom Point.

(*8*) Halibut Cove Subdistrict: All waters within a line from a marker on Glacier Spit at 59°38′ N. lat., 151°12′30″ W. long., to the intersection of the Northshore Subdistrict line at 59°38′15″ N. lat., 151°18′45″ W. long., to Coal Point to Peterson Point.

(D) Kamishak Bay District: All waters enclosed by a line from 59°46′15″ N. lat., 153°30′ W. long., then east to 59°46′15″ N. lat., 152°20′ W. long., then south to 59°03′25″ N. lat., 152°20′ W. long., then southwesterly to Cape Douglas (58°52′ N. lat.).

(*1*) Iniskin Bay Subdistrict: All waters north of a line from a point on the east shore of Iniskin Bay near Scott Island at 59°38′35″ N. lat., 153°25′30″ W. long., to a point north of South Head at 59°37′20″ N. lat., 153°33′30″ W. long.;

(*2*) Cottonwood Bay Subdistrict: All waters west of a line from South Head north to a point at 59°37′20″ N. lat., 153°33′30″ W. long.;

(*3*) Ursus Cove Subdistrict: All waters west of the longitude of Ursus Head and north 59°28′05″ N. lat.;

(*4*) Rocky Cove Subdistrict: All waters between 59°28′05″ N. lat., and 59°25′ N. lat., and west of 153°40′ W. long;

(*5*) Bruin Bay Subdistrict: All waters between 59°25′ N. lat., and 59°20′ N. lat., and west of 153°40′ W. long.;

(*6*) Kamishak River Subdistrict: All waters east of a line from McNeil Head at 59°07′24″ N. lat., 154°10′24″ W. long. to the mushroom islet at 59°07′45′ N. lat., 154°09′30″ W. long. to the northern tip of Nordyke Island at 59°11′ N. lat., 154°05′ W. long., south of the latitude of the northern tip of Nordyke Island, and west of 153°50′ W. long.;

(*7*) McNeil River Subdistrict: All waters southwest of a line from McNeil Head to a point of land at 59°09′30″ N. lat., 154°12′45″ W. long.;

(*8*) Chenik Subdistrict: All waters between 59°20′ N. lat., and the latitude of the northern tip of Nordyke Island at 59°11′ N. lat., 154°05′ W. long., and west of 153°40′ W. long.;

(*9*) Paint River Subdistrict: All waters south of the latitude of the northern tip of Nordyke Island at 59°11′ N. lat., 154°05′ W. long., west of a line from the northern tip of Nordyke Island to the mushroom islet at 59°07′45″ N. lat., 154°09′30″ W. long. to McNeil Head and east of a line from McNeil Head to a point of land at 59°09′30″ N. lat., 154°12′45″ W. long.;

(*10*) Douglas River Subdistrict: All waters west of the longitude of Cape Douglas (153°10′30″ W. long.), south of the latitude of the northern tip of

Nordyke Island at 59°11′ N. lat., 154°05′ W. long., and east of 153°50′ W. long.

(E) Barren Island District: All waters enclosed by a line from Cape Douglas (58°52′ N. lat.) to the tip of Cape Elizabeth, then south to 58°52′ N. lat., 151°53′ W. long., then west to Cape Douglas.

(F) Outer District: All waters enclosed by a line from the tip of Point Adam to the tip of Cape Elizabeth, then south to 58°52′ N. lat., 151°53′ W. long., then east to the longitude of Aligo Point (149°44′33″ W. long.), then north to the tip of Aligo Point.

(1) Koyuktolik Subdistrict: All waters east of the longitude of Point Adam and north of 59°13′55″ N. lat.;

(2) Port Chatham Subdistrict: All waters north of 59°10′ N. lat., and east of 151°50′ W. long.;

(3) Windy Bay Subdistrict: All waters west of a line from 59°12′33″ N. lat., 151°27′30″ W. long., to 59°14′08″ N. lat., 151°26′24″ W. long.;

(4) Rocky Bay Subdistrict: All waters north of a line from 59°14′08″ N. lat., 151°26′24″ W. long., to 59°12′24″ N. lat., 151°19′15″ W. long.; Scurvey Creek Section: all waters northwest of a line from 59°34′30″ N. lat., 151°26′24″ W. long. to a point on the southwest corner of Picnic Harbor at 59°15′05″ N. lat., 151°25′ W. long.;

(5) Port Dick Subdistrict: All waters of Port Dick north of 59°13′ 12″ N. lat.;

(i) Port Dick North Section: All waters of the northern shore of West Arm bounded by a line from the marker at 59°18′40″ N. lat., 151°16′50″ W. long., south to a point 300 yards offshore then southeasterly to 59°16′50″ N. lat., 151°05′55″ W. long. then north to the waterfall at 59°16′40″ N. lat.

(ii) Port Dick South Section: Waters of the subdistrict not included in the Port Dick North Section.

(6) Nuka Island Subdistrict: All waters of Nuka Passage north of a line from Front Point to Nuka Point and south of the latitude of Hardover Point;

(7) East Nuka Subdistrict: All waters of the East Arm of Huka Bay north of the latitude of Harrington Point.

(G) Eastern District: All waters east of the longitude of Aligo Point (149°44′33″ W. long.), west of the longitude of Cape Fairfield (148°50′ W. long.), and north of 58°52′ N. lat.

(1) Aialik Bay Subdistrict: All waters north of a line from Aligo Point to Aialik Cape;

(2) Resurrection Bay Subdistrict: All waters north of the latitude of Caines Head (59°59′ N. lat.)

(ii) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, fish may be taken at any time in the Cook Inlet area.

(iii) Salmon may be taken for subsistence purposes only as follows:

(A) In the Tyonek subdistrict;

(1) From May 15 through June 15 from 4:00 a.m. to 8:00 p.m. on Tuesdays, Thursdays and Fridays;

(2) From June 16 through October 15 from 6:00 a.m. to 6:00 p.m. on Saturdays;

(3) The season described in paragraph (f)(10)(iii)(A) *(1)* of this section shall close by emergency order when 4,200 king salmon have been taken;

(4) The season described in paragraph (f)(10)(iii)(A) *(2)* of this section shall not open until July 1, if 4,200 king salmon are taken before June 16.

(B) In the Port Graham and Koyuktolik Subdistricts from April 1 through September 30 from 8:00 a.m. Monday until 6:00 a.m. Wednesday and from 6:00 a.m. Thursday until 6:00 a.m. Saturday;

(iv) Dolly varden may be taken in fresh water for subsistence purposes in the Port Graham Subdistrict only from April 1 through May 31.

(v) Only those residents domiciled in Port Graham and English Bay may take salmon in the Port Graham and Koyuktolik Subdistricts and dolly varden in fresh water in the Port Graham Subdistrict.

(vi) Only those residents domiciled in the village of Tyonek may take salmon in the Tyonek Subdistrict.

(vii) Unless otherwise restricted or under the terms of a subsistence fishing permit, fish may be taken by listed gear.

(viii) Salmon may be taken only as follows:

(A) In the Tyonek Subdistrict by set gill nets not exceeding 10 fathoms in length, six inches in mesh size and 45 meshes in depth;

(B) In the Port Graham and Koyuktolik Subdistricts by set gill nets not exceeding 35 fathoms in length, six inches in mesh size and 45 meshes in depth;

(C) No part of a set gill net may be set or operated within 600 feet of any part of another set gill net.

(ix) No person may operate or assist in the operation of subsistence salmon net gear on the same day that person operates or assists in the operation of commercial salmon gear.

(x) Bottomfish may be taken by legal gear for commercial bottomfish in the area.

(xi) Smelt and herring may be taken only with gill nets and dip nets. Gill nets used to take smelt may not exceed 50 feet in length and two inches in mesh size.

(xii) Gill nets may not be used in fresh water, except for the taking of whitefish in the Tyonek River drainage.

(xiii) Dolly varden may be taken in fresh water only by beach seines not exceeding 10 fathoms in length.

(xiv) All salt water is closed to the taking of finfish except

(A) The Tyonek and Port Graham Subdistricts;

(B) Salmon may be taken in the Koyuktolik Subdistrict.

(xv) Salmon may not be taken in any area closed to commercial salmon fishing unless otherwise permitted.

(xvi) Trout, grayling, char, and burbot may not be taken in fresh water, except that dolly varden may be taken in fresh water in the Port Graham Subdistrict.

(xvii) Salmon may be taken only under the authority of a subsistence fishing permit issued by the Alaska Department of Fish and Game; only one permit may be issued to a household each year. A subsistence fishing permit holder shall record daily salmon catches on forms provided by the department.

(xviii) Whitefish may be taken only in the Tyonek River drainage and only under the authority of a permit issued by the department.

(xix) Dolly varden may be taken in fresh water only under the authority of a subsistence fishing permit issued by the department; only one permit may be issued to a household each year. A subsistence fishing permit holder shall record daily dolly varden catches on forms provided by the department.

(xx) No person may possess salmon taken under the authority of a subsistence fishing permit unless both lobes of the caudal fin (tail) have been immediately removed from the salmon.

(xxi) It is unlawful to purchase or sell salmon from which both lobes of the caudal fin (tail) have been removed.

(xxii) The total annual possession limit for each subsistence salmon permit is as follows:

(A) There is no total annual possession limit for holders of Port Graham and Koyuktolik Subdistrict subsistence salmon fishing permits;

(B) 25 salmon for the head of household and 10 salmon for each dependent of the permit holder.

(C) In addition to the limits in (B) of this subsection; the holder of a Tyonek subdistrict subsistence salmon fishing permit may take 70 king salmon; no more than 4,200 king salmon may be taken in the Tyonek subdistrict during the period May 15 through June 30.

(11) Prince William Sound Area.

(i) The Prince William Sound Area includes all waters of Alaska between the longitude of Cape Fairfield and the longitude of Cape Suckling.

(A) The Upper Copper River District consists of all waters of the mainstem Copper River from the mouth of the Slana River downstream to an east-west line crossing the Copper River approximately 200 yards upstream of Haley Creek as designated by Alaska Department of Fish and Game regulatory markers.

(*1*) The Chitina Subdistrict consists of all waters of the Upper Copper River District downstream of the downstream edge of the Chitina-McCarthy Road Bridge and the east side of the Copper River from the upstream edge of the bridge to an Alaska Department of Fish and Game regulatory marker located one quarter of a mile upstream of the bridge.

(*2*) The Glennallen Subdistrict consists of all remaining waters of the Upper Copper River District.

(ii) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, fish may be taken at any time in the Prince William Sound Area.

(iii) Salmon may be taken in the Upper Copper River District only as follows:

(A) In the Glennallen Subdistrict, from June 1 through September 30;

(B) In the Chitina Subdistrict, only when that subdistrict is open to the personal use salmon fishing;

(C) When the Copper River subsistence fishery is closed or restricted because of an inadequate escapement of sockeye or chinook salmon, the fishery may be reopened September 1 for the taking of coho salmon, which constitute the majority of the salmon at that time.

(iv) Herring spawn on kelp may be taken only during the open commercial herring spawn on kelp season.

(v) Fish may be taken by gear previously listed unless restricted in this section or under the term of a subsistence fishing permit.

(vi) Salmon may be taken only by the following types of gear:

(A) In the Glennallen Subdistrict by fishwheels or dip nets;

(B) In the Chitina Subdistrict by dip nets when the personal use salmon fishery is open in that subdistrict;

(C) In salt water by gill nets and seines.

(vii) Fishwheels used for subsistence fishing may not be rented, leased, or otherwise used for personal gain. Subsistence fishwheels must be removed from the water at the end of the permit period. Each permittee may operate only one fishwheel at any one time. No person may set or operate a fishwheel within 75 feet of another fishwheel. No fishwheel may have more than two baskets.

(viii) The permit holder (permittee) must personally operate the fishwheel or dip net. A subsistence fishwheel or dip net permit may not be loaned or transferred except as permitted by Alaska regulations.

(ix) Herring spawn on kelp may be taken only by a hand-held unpowered blade cutting device. Kelp plant blades must be cut at least four inches above the stipe (stem). The provisions of this subsection do not apply to "Fucus" species.

(x) A wood or metal plate at least 12 inches high by 12 inches wide, bearing the permit holder's name and address in letters and numerals at least one inch high, must be attached to each fishwheel so that the name and address are plainly visible.

(xi) All tributaries of the Copper River and waters of the Copper River not in the Upper Copper River District are closed to the taking of salmon.

(xii) Crosswind Lake is closed to all subsistence fishing.

(xiii) Salmon may not be taken in any area closed to commercial salmon fishing unless otherwise permitted.

(xiv) Salmon may not be taken in the Chitina Subdistrict, or in any portion of the subdistrict, when those waters are closed to personal use salmon fishing.

(xii) Gill nets may not be used in fresh waer, except for the taking of whitefish in the Tyonek River drainage.

(xiii) Dolly varden may be taken in fresh water only by beach seines not exceeding 10 fathoms in length.

(xiv) All salt water is closed to the taking of finfish except

(A) The Tyonek and Port Graham Subdistricts;

(B) Salmon may be taken in the Koyuktolik Subdistrict.

(xv) Salmon may not be taken in any area closed to commercial salmon fishing unless otherwise permitted.

(xvi) Trout, grayling, char, and burbot may not be taken in fresh water, except that dolly varden may be taken in fresh water in the Port Graham Subdistrict.

(xvii) Salmon may be taken only under the authority of a subsistence fishing permit issued by the Alaska Department of Fish and Game; only one permit may be issued to a household each year. A subsistence fishing permit holder shall record daily salmon catches on forms provided by the department.

(xviii) Whitefish may be taken only in the Tyone River drainage and only under the authority of a permit issued by the department.

(xix) Dolly varden may be taken in fresh water only under the authority of a subsistence fishing permit issued by the department; only one permit may be issued to a household each year. A subsistence fishing permit holder shall record daily dolly varden catches on forms provided by the department.

(xx) No person may possess salmon taken under the authority of a subsistence fishing permit unless both lobes of the caudal fin (tail) have been immediately removed from the salmon.

(xxi) It is unlawful to purchase or sell salmon from which both lobes of the caudal fin (tail) have been removed.

(xxii) The total annual possession limit for each subsistence salmon permit is as follows:

(A) There is no total annual possession limit for holders of Port 'graham and Koyuktolik Subdistrict subsistence salmon fishing permits;

(B) 25 salmon for the head of household and 10 salmon for each dependent of the permit holder.

(C) In addition to the limits if (B) of this subsection; the holder of a Tyonkek subdistrict subsistence salmon fishing permit may take 70 king salmon; no more than 4,200 king salmon may be taken in the Tyonek subdistrict during the period May 15 through June 30.

(11) Prince William Sound Area.

(i) The Prince William Sound Area includes all waters of Alaska between the longitude of Cape Fairfield and the longitude of Cape Suckling.

(A) The Upper Copper River District consists of all waters of the mainstem Copper River from the mouth of the Slana River downstream ot an east-west line crossing the Copper River approximately 200 yards upstream of Haley Creek as designated by Alaska Department of Fish and Game regulatory markers.

(*1*) The Chitina Subdistrict consists of all waters of the Upper Copper River District downstream of the downstream edge of the Chitina-McCarthy Road Bridge and the east side of the Copper River form the upstream edge of the bridge to an Alaska Department of Fish and Game regulatory marker located one quarter of a mile upstream of the bridge.

(*2*) The Glennallen Subdistrict consists of all remaining waters of the Upper Copper River District.

(ii) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, fish may be taken at any time in the Prince William Sound Area.

(iii) Salmon may be taken in the Upper Copper River District only as follows:

(A) In the Glennallen Subdistrict, from June 1 through September 30;

(B) In the Chitina Subdistrict, only when that subdistrict is open to the personal use salmon fishing;

(C) When the Copper River subsistence fishery is closed or restricted because ofan inadequate escapement of sockeye or chinook salmon, the fishery may be reopened Stpebmer 1 for the taking of coho salmon, which constitute the majority of the salmon at that time.

(iv) Herring spawn on kelp may be taken only durign the open commercial herring spawn or kelp season.

(v) Fish may be taken by gear previously listed unless restricted in this section or under the term of a subsistence fishing permit.

(vi) Salmon may be taken only by the following types of gear:

(A) In the Glennallen Subdistrict by fishwheels or dip nets;

(B) In the Chitina Subdistrict by dip nets when the personal use salmon fishery is open in that subdistrict;

(C) In salt water by gil ents and seines.

(vii) Fishwheels used for subsistence fishing may not be rented, leased, or otherwise used for personal gain. Subsistence fishwheels must be removed from the water at the end of the permit period. Each permittee may operate only oe fishwheel at any one time. No person may set or operate a fishwheel within 75 feet of another fishwheel. No fishwheel may have more than two baskets.

(viii) The permit holder (permittee) must personally operate the fishwheel or dip net. A subsistence fishwheel or dip net permit may not be loaned or transferred except as permitted by Alaska regulations.

(ix) Herring spawn on kelp may be take only by a hand-held unpowered blade cutting device. Kelp plant blades must be cut at least four inches above the stipe (stem). The provisions of this subsection do not apply to "Fucus" species.

(x) A wood or metal plate at least 12 inches high by 12 inches wide, bearing the permit holder's name and address in letters and numerals at least one inch high, must be attached to each fishwheel so that the name and address are plainly visible.

(xi) All tributaries of the Copper River and waters of the Copper River District not in the Upper Copper River District are closed to the taking of salmon.

(xii) Crosswind Lake is closed ot all subsistence fishing.

(xiii) Salmon may not be taken in any area closed to commercial salmon fishing unless otherwise permitted.

(xiv) Salmon may not be taken in the Chitina Subdistrict, or in any portion of the subdistrict, when those waters are closed to personal use salmon fishing.

(xv) Salmon may not be taken on the east side of the Copper River from the upstream edge of the Chitina-McCarthy Road Bridge upstream to the Alaska Department of Fish and Game regulatory marker located one quarter of a mile upstream of the bridge.

(xvi) Except as provided in this section, fish other than salmon and freshwater fish species may be taken for subsistence purposes without a subsistence fishing permit.

(xvii) Salmon and freshwater fish species may be taken only under the authority of a subsistence fishing permit.

(xviii) Only one subsistence fishing permit will be issued to each household per year.

(xix) A subsistence salmon fishing permit for the Upper Copper River District will be issued only to a resident domiciled in Game Management Units 11, 13-A, 13-B, 13-C, and 13-D; in Game Management Unit 12 except that portion east of the Nabesna River and south of the winter trail running southeast from Pickerel Lake to the Canadian border; and in that road-connected area of Game Management Unit 20-D from Alaska Highway Milepost 1371.4 to Milepost 1347. The following apply to Upper Copper River District subsistence salmon fishing permits:

(A) Only one type of gear may be specified on a permit;

(B) Only one permit per year may be issued to a household;

(C) Permits must be returned to the Alaska Department of Fish and Game no later than October 31, or a permit for the following year may be denied.

(D) During closed fishing periods, the Alaska Department of Fish and Game's Chitina permit issuing station may be closed or operated at reduced hours to reduce costs.

(xx) The total annual possession limit for an Upper Copper River District subsistence salmon fishing permit is as follows:

(A) 30 salmon for a household with one person;

(B) 60 salmon for a household with two persons;

(C) 10 salmon for each additional person in a household over two;

(D) Upon request, permits for additional salmon will be issued with the following limits:

(*1*) No more than a total of 200 salmon for a permit issued to a household with one person;

(*2*) No more than a total of 500 salmon for a permit issued to a household with two or more persons.

(xxi) No person may possess salmon taken under the authority of an Upper Copper River District subsistence fishing permit unless the dorsal fin has been immediately removed from the salmon.

(xxii) In locations open to commercial salmon fishing and in conformance with commercial salmon fishing regulations, the annual subsistence salmon limit is as follows:

(A) 15 salmon for a household of one person;

(B) 30 salmon for a household of two persons;

(C) 10 salmon for each additional person in a household over two;

(D) No more than five king salmon may be taken per permit.

(xxiii) Salmon, other than chinook salmon, may be taken in the vicinity of the former native village of Batzulnetas under the following conditions:

(A) Salmon may be taken only under the authority of a Batzulnetas subsistence salmon fishing permit issued by ADF&G; permits may be issued only to those residents domiciled in the villages of Dot Lake and Mentasta;

(B) Salmon may be taken only in those waters of the Copper River between Alaska Department of Fish and Game regulatory markers located near the mouth of Tanada Creek and approximately one-half mile downstream from that mouth and in Tanada Creek between Alaska Department of Fish and Game regulatory markers identifying the open waters of the creek;

(C) Fishwheels and dipnets only may be used on the Copper River; dipnets and spears only may be used in Tanada Creek;

(D) Salmon may be taken only from June 1 through September 1 or until the season is closed by emergency order; fishing periods are to be established by emergency order and are two days per week during the month of June and 3.5 days per week for the remainder of the season;

(E) Chinook salmon taken must be released to the water unharmed; fish wheels must be equipped with a live box or be monitored at all times;

(F) The permit must be returned to the Alaska Department of Fish and Game's Glennallen office no later than September 30 of each year.

(xxiv) Subsistence salmon fishing permits for the Southwestern District and Green Island may be issued only to those residents domiciled in the Southwestern District which is mainland waters from the outer point on the north shore of Granite Bay to Cape Fairfield and all waters surrounding Knight Island, Chenega Island, Bainbridge Island, Evans Island, Elrington Island, Latouche Island and adjacent islands. Salmon may be taken for subsistence purposes in those waters only as follows:

(A) Salmon may be taken only in the Southwestern District, as described in above, and along the northwestern shore of Green Island from the westernmost tip of the island to the northernmost tip;

(B) Salmon may be taken only by gill nets up to 150 fathoms in length, except that pink salmon may be taken in fresh water by dipnets only;

(C) Salmon may be taken only from May 15 through September 30;

(D) Fishing periods are from May 15 until two days before the commercial opening of the Southwestern District, seven days per week; during the commercial salmon fishing season, only during open commercial salmon fishing periods; and from two days following the closure of the commercial salmon season until September 30, seven days per week;

(E) No fishing is allowed within the closed waters areas for commercial salmon fisheries; only pink salmon may be taken in fresh water;

(F) There are no bag and possession limits for this fishery;

(G) Permits may be issued only at Chenega Bay village.

(xxv) Subsistence salmon fishing permits for those waters north of a line from Porcupine Point to Granite Point, and south of a line from Point Lowe to Tongue Point, may be issued only to those residents domiciled in the villages of Tatitlek and Ellamar. Salmon may be taken for subsistence purposes in those waters only as follows:

(A) Salmon may be taken only in those waters north of a line from Porcupine Point to Granite Point, and south of a line from Point Lowe to Tongue Point;

(B) Salmon may be taken only by gill nets up to 150 fathoms in length, with a maximum mesh size of 6.25 inches, except that pink salmon may be taken in fresh water by dipnets only;

(C) Salmon may be taken only from May 15 through September 30;

(D) Fishing periods are from May 15 until two days before the commercial opening of the Southwestern District, seven days per week; during the commercial salmon fishing season, only during open commercial salmon fishing periods; and from two days following the closure of the commercial salmon season until September 30, seven days per week;

(E) No fishing is allowed within the closed waters areas for commercial salmon fisheries; only pink salmon may be taken in fresh water;

(F) There are no bag and possession limits for this fishery;

(G) Permits may be issued only at Tatitlek village.

(12) Yakutat Area. (i) The Yakutat area includes all waters of Alaska between the longitude of Cape Suckling and the longitude of Cape Fairweather.

(ii) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, fish may be taken at any time in the Yakutat area.

(iii) Salmon may not be taken during the period commencing 48 hours before an opening until 48 hours after the closure of an open commercial salmon net fishing season. This applies to each river or bay fishery individually.

(iv) When the length of the weekly commercial salmon net fishing period exceeds two days in the Yakutat Area salmon net fishery the subsistence fishing period is from 6:00 a.m. to 6:00 p.m. on Saturday in that location.

(v) Only those residents domiciled east of Yakutat Bay, including the islands within Yakutat Bay, west of the Situk River drainage, and south of and including Knight Island may take

(A) Herring and herring spawn in waters of Yakutat Bay, including Russell Fiord, within a line from the westernmost point of Point Manby to the southernmost point of Ocean Cape;

(B) Bottomfish in waters of Yakutat Bay, including Russell Fjord, and in waters of Alaska from Point Manby to Ocean Cape bounded by Loran C lines 7960-Y-30630 and 7960-Y-30430;

(C) Salmon in freshwater upstream from the terminus of streams and rivers of the Yakutat area from the Doame River to the Tsiu River, in waters of Yakutat Bay and Russell Fiord inside a line from the westernmost point of Point Manby to the southernmost point of Ocean Cape, and in waters of Icy Bay inside a line from the Westernmost tip of Point Riou to Icy Cape Light;

(D) Dolly varden char, steelhead trout, and smelt in freshwater upstream from the terminus of streams and rivers of the Yakutat area from the Doame River to Point Manby, and in waters of Yakutat Bay and Russell Fiord inside a line from the westernmost point of Point Manby to the southernmost point of Ocean Cape.

(vi) Fish may be taken by gear previously listed, unless restricted in this section or under the terms of a subsistence fishing permit.

(vii) In the Situk River, each subsistence salmon fishing permit holder shall attend his or her gill net at all times when it is being used to take salmon.

(viii) Salmon, trout and char may be taken only under authority of a subsistence fishing permit.

(ix) The Alaska Department of Fish and Game shall not issue a permit for the taking of steelhead trout, but steelhead trout taken incidentally by gear operated under the terms of a subsistence permit for salmon are legally taken and possessed for subsistence purposes. The holder of a subsistence salmon permit must report any steelhead trout taken in this manner on his or her permit calendar.

(x) Salmon, trout, or char taken incidentally by gear operated under the terms of a subsistence permit for salmon are legally taken and possessed for subsistence purposes. The holder of a subsistence salmon permit must report any salmon, trout, or char taken in this manner on his or her permit calendar.

(xi) Subsistence fishermen must remove the dorsal fin from subsistence caught slamon when taken.

(13) Southeastern Alaska Area. (i) The Southeastern Alaska Area includes all waters between a line projecting southwest from the westernmost tip of Cape Fairweather and Dixon Entrance.

(A) District 1: All waters east and north of a line from the southernmost tip of Caamano Point to 54°40′ N. lat., 131°45′ W. long., and north of a line from 54°40′ N. lat., 131°45′ W. long., 54°42′29″ N. lat., 130°36′55″ W. long.

(*1*) Section 1-A: All waters of Portland Canal north of the latitude of Hattie Island light;

(*2*) Section 1-B: All waters south of Section 1-A and east and south of a line extending three miles bearing 297° from the range marker located at Foggy Point (54°55′32″ N. lat., 130°58′30″ W. long.) and then south to intersect a line between Barren Island Light and Lord Rock Light, then to Lord Rock Light, and then to the southern boundary of district 1;

(3) Section 1-C: Waters of the district between a line from a point at 55°11′47″ N. lat., 131°05′08″ W. long., located on Point Sykes to a point at 55°12′13″ N. lat., 131°05′42″ W. long., located one-half mile northwest of Point Sykes to Point Alava, and a line from Point Eva to Cactus Point;

(4) Section 1-D: Waters of the district between a line from Point Eva to Cactus Point and a line from Nose Point to Snail Point;

(5) Section 1-E: Waters of the district between a line from Caamano Point to Point Higgins and a line from Nose Point to Snail Point;

(6) Section 1-F: All other waters of the District.

(B) District 2: All waters south of a line from the easternmost tip of Narrow Point to the northernmost tip of Lemesusrier Point, west of District 1 and east of a line from Point Marsh Light to 54°40′ N. lat., 132°17′30″ W. long.

(C) District 3: All waters north of a line from Point Marsh Light to 54°40′ N. lat., 132°17′30″ W. long. to the southernmost tip of Cape Muzon and east of a line from the northernmost tip of Eagle Point on Dall Island and passing successively through the southernmost tip of Point Arboleda, the northernmost tip of Point San Roque, the southernmost tip of Cape Ulitka, the northeasternmost tip of Cape Lynch to the southwest entrance point of Halibut Harbor on Kosciusko Island, and south of the latitude of Aneskett Point (56°08′50″ N. lat.);

(1) Section 3-A: Waters of the district south of 55° 15′ N. lat., excluding waters of Meares Passage;

(2) Section 3-B; Waters of the district south of the latitude of Cape Lynch (55°47′ N. lat.) and north of 55°15′ N. lat., including all waters of Meares Passage;

(3) Section 3-C; Waters of the district north of the latitude of Cape Lynch (55°47′ N. lat.);

(D) District 4: All waters north of Cape Muzon, west of District 3, and south of a line from Helm Point on Coronation Island to Cape Lynch.

(E) District 5: Waters of Sumner Strait, north and east of a line from Cape Decision of Helm Point to Cape Lynch to the southwest entrance point of Halibut Harbor, and north of the latitude of Aneskett Point, west of a line from Point Baker to Point Barrie, and south of a line from Point Camden to Salt Point Light in Keku Strait.

(F) District 6: All waters of Clarence Strait north of a line from Narrow Point to Lemesuriere Point to Ernest Point to the most southerly point of Etolin Island. Stikine Strait south of the latitude of Round Point, Sumner Strait west of a line from Point Alexander to Low Point, and east of a line from Point Baker to Point Barrie, Wrangell Narrows south and west of a line from Prolewy Point to the northern tip of Mitkof Island, and all waters of Duncan Canal;

(1) Section 6-A: Waters north of a line from the tip of Point Colpoys to the tip of Macnamara Point, west of a line from the tip of Low Point to the tip of Point Alexander and east of a line from the tip of Point Barrie to the tip of Point Baker;

(2) Section 6-B: Waters south of a line from the tip of Point Colpoys to the tip of Macnamara Point, north and west of a line from the tip of Luck Point to the tip of Point Stanhope to Lincoln Rock Light to Key Reef Light to Nesbitt Reef Light to the tip of Point Nesbitt.

(3) Section 6-C: Waters enclosed by a line from Lincoln Rock Light to the westernmost point of Screen Islands to the westernmost point of Marsh Island to the westernmost point of Steamer Rocks to Mariposa Rock Buoy to the tip of Point Nesbitt to Nesbitt Reef Light to Key Reef Light to Lincoln Rock Light;

(4) Section 6-D: all other waters of the district.

(G) District 7: All contiguous waters of Ernest Sound and Bradfield Canal east of a line from Lemesurier Point to Ernest Point to the most southerly point of Etolin Island, Zimovia Strait south of the latitude of Nemo Point, and Eastern Passage and Blake Channel south of a line from Babbler Point to Hour Point;

(*1*) Section 7-A: Waters of the district north of the latitude of Point Eaton;

(*2*) Section 7-B: Waters of the district south of the latitude of Point Eaton.

(H) District 8: Waters of Frederick Sound south of a line from Wood Point to beacon Point (excluding Wrangell Narrows), Stikine Strait, Sumner Strait, Zimovia Strait and eastern Passage inside a line from Point Alexander to Low Point to Round Point to Nemo Point to Hour Point to Babbler Point;

(*1*) Section 8-A: Waters of the district north of a line from Blaquiere Point to Kakwan Point.

(*2*) Section 8-B: Waters of the district south of a line from Blaquiere Point to Kakwan Point.

(I) District 9: All waters of Frederick Sound and Chatham Strait south of the latitude of the southernmost tip of Point Gardner, south of the latitude of the southernmost tip of Elliott Island and west of a line from the southernmost tip of Elliott Island to the westernmost tip of Point Macartney, north and west of a line from the northernmost tip of Point Camden to Salt Point Light, north and east of a line from the southernmost tip of Cape Decision to the southernmost tip of Helm Point to the westernmost tip of Hazy Islands to Cape Ommaney Light;

(*1*) Section 9-A: Waters of the district west of a line from Nation Point on Coronation Island to the latitude of Point Gardner two miles west of Point Gardner;

(*2*) Section 9-B: Waters of the district east of a line from Nation Point on Coronation Island to the latitude of Point Gardner two miles west of Point Gardner.

(J) District 10: Frederick Sound, Stephens Passage and contiguous waters north of a line from Beacon Point to Wood Point, east of a line from Point Macartney to the southern tip of Elliott Island, north of the latitude of the southern tip of Elliott Island, Seymour Canal south of 57°37′ N. lat., and south of a line from Point League to Point Hugh.

(K) District 11: Stephens Passage and contiguous waters north of a line from Point League to Point Hugh and Seymour Canal north of 57°37′ N. lat., south of the latitude of Little Island Light, and east of a line from Little Island Light to Point Retreat Light;

(*1*) Section 11-A: Waters of the district north and west of a line from a point at 58°12′20″ N. lat., 134°10′ W. long. to the Coast Guard marker and Light on Point Arden;

(*2*) Section 11-B: Waters of the district north of the latitude of Midway Island Light and south and east of a line from a point at 58° 12′ 20″ N. lat., 134° 10′ W. long. to the Coast Guard marker and Light on Point Arden.

(*3*) Section 11-C: Waters of the district south of the latitude of Midway Island Light to a line from Point League to Point Hugh;

(*4*) Section 11-D: All waters of Seymour Canal north of 57° 37′ N. lat.

(L) District 12: All waters of Lynn Canal and Chatham Strait south of the latitude of Little Island Light to the latitude of Point Gardner, west of a line from Little Island Light to Point Retreat Light, east of a line from Point Couverdon to Point Augusta, and east of a line from Point Hayes to Point Thacher.

(*1*) Section 12-A: All waters of Chatham Strait south of the latitude of Point Couverdon (58° 11′ 25″ N. lat.) to the latitude of Point Gardner (57° 01′ N. lat.), east of a line from the southeasternmost tip of Point Hayes to the northernmost tip of Point Thacher;

(*2*) Section 12-B: All waters of Lynn Canal south of the latitude of Little Island Light, west of a line from Little Island Light to Point Retreat Light and north of the latitude of Point Couverden (58° 11′ 25″ N. lat.).

(M) District 13: All waters north of the latitude of the southernmost tip of Helm Point and west of a line from the southernmost tip of Helm Point to the westernmost tip of Hazy Island to Cape Ommaney Light, south of a line projecting west from the southernmost tip of Cape Spencer through Yakobi Rock to Yakobi Island, south of a line from the northernmost tip of Soapstone Point to the westernmost tip of Column Point and west of a line from the southernmost tip of Point Hayes to the northernmost tip of Point Thacher.

(*1*) Section 13-A: All waters north of 57° 16′ N. lat. and those waters of Peril Strait south of the latitude of Pogibshi Point (57° 30′ 30″ N. lat.);

(*2*) Section 13-B: All waters south of 57° 16′ N. lat.;

(*3*) Section 13-C: Waters of the district north of the latitude of Pogibshi Point and west of a line from Point Hayes to Point Thatcher in Peril Strait.

(N) District 14: All waters of Icy Strait west of a line from the southernmost tip of Point Couverden to Point Augusta Light, east of a straight line from the southernmost tip of Cape Spencer through Yakobi Rock to Yakobi Island and north of a line from the northernmost point of Soapstone Point to the westernmost point of Column Point;

(*1*) District 14-A: Waters of the district west of a line beginning at 58°13′ N. lat., 135°57′ W. long. to Lemesurier Island to Point Carolus;

(*2*) Section 14-B: Waters of the district east of a line beginning 58°13′ N. lat., 135°57′ W. long. to Lemesurier Island to Point Carolus and west of a line from Point Sophia to Excursion Point at 58°22′30″ N. lat., 135°29′ W. long.;

(*3*) Section 14-C: Waters of the district east of a line from Point Sophia to Excursion Point at 58°22′30″ N. lat., 135° 29′ W. long.

(O) District 15: All waters of Lynn Canal north of the latitude of Little Island Light;

(*1*) Section 15-A: All waters of the district north of the latitude of Sherman Rock Light;

(*2*) Section 15-B: Waters of Berners Bay east of a line from Point St. Mary to Point Bridget;

(*3*) Section 15-C: All waters of the district south of the latitude of Sherman Rock Light, except for the waters of Section 15-B.

(P) District 16: All waters north of a line projecting west from the southernmost tip of Cape Spencer and south of a line projecting southwest from the westernmost tip of Cape Fairweather.

(Q) Dixon Entrance District: All waters east of 138°45′20″ W. long., south of the southern boundaries of Districts 1, 2, 3 and 4 and north of a line from 54°43′30″ N. lat., 130°37′37″ W. long., to 54°43′24″ N. lat., 130°37′39″ W. long., to 54°43′15″ N. lat., 130°37′44″ W. long., to 54°43′00″ N. lat., 130°37′55″ W. long., to 54°42′58″ N. lat., 130°37′57″ W. long., to 54°42′47″ N. lat., 130°38′06″ W. long., to 54°42′22″ N. lat., 130°38′26″ W. long., to 54°41′09″ N. lat., 130°38′58″ W. long., to 54°39′54″ N. lat., 130°38′58″ W. long., to 54°39′14″ N. lat., 130°39′18″ W. long., to 54°39′48″ N. lat., 130°41′35″ W. long., to 54°40′03″ N. lat., 130°42′22″ W. long., to 54°40′42″ N. lat., 130°44′43″ W. long., to 54°40′41″ N. lat., 130°44′59″ W. long., to 54°40′46″ N. lat., 130°45′51″ W. long., to 54°41′06″ N. lat., 130°48′31″ W. long., to 54°41′05″ N. lat., 130°49′17″ W. long., to 54°41′21″ N. lat., 130°53′18″ W. long., to 54°41′26″ N. lat., 130°53′39″ W. long., to 54°42′27″ N. lat., 130°56′18″ W. long., to 54°42′34″ N. lat., 130°57′09″ W. long., to 54°43′00″ N. lat., 130°57′41″ W. long., to 54°43′46″ N. lat., 130°58′55″ W. long., to 54°44′12″ N. lat., 130°59′44″ W. long., to 54°45′39″ N. lat., 131°03′06″ W. long., to 54°46′16″ N. lat., 131°04′43″ W. long., to 54°42′11″ N. lat., 131°13′00″ W. long., to 54°11′ N. lat., 134°01′52″ N. lat., 131°13′54″ W. long., to 54°39′09″ N. lat., 131°16′17″ W. long., to 54°36′52″ N. lat., 131°19′22″ W. long., to 54°29′53″ N. lat., 131°33′48″ W. long., to 54°30′32″ N. lat., 131°38′01″ W. long., to 54°28′18″ N. lat., 131°45′20″ W. long., to 54°26′41″ N. lat., 131°49′28″ W. long., to 54°21′51″ N. lat., 132°02′54″ W. long., to 54°24′52″ N. lat., 132°23′39″ W. long., to 54°24′41″ N. lat., 132°24′29″ W. long., to 54°24′41″ N. lat., 132°24′35″ W. long., to 54°24′39″ N. lat., 132°26′51″ W. long., to 54°24′34″ N. lat., 132°38′16″ W. long. to 54°24′54″ N. lat., 132°39′46″ W. long., to 54°26′00″ N. lat., 132°44′12″ W. long., to 54°27′07″ N. lat., 132°49′35″ W. long., to 54°27′07″ N. lat., 132°50′42″ W. long., to 54°28′25″ N. lat., 132°55′54″ W. long., to 54°28′32″ N. lat., 132°56′28″ W. long., to 54°30′03″ N. lat., 133°07′00″ W. long., to 54°30′10″ N. lat., 133°07′43″ W. long., to 54°30′42″ N. lat., 133°11′28″ W. long., to 54°31′02″ N. lat., 133°14′00″ W. long. to 54°30′06″ N. lat., 133°16′58″ W. long., to 54°22′01″ N. lat., 133°44′24″ W. long., to 54°20′33″ N. lat., 133°49′21″ W. long., to 54°15′40″ N. lat., 134°19′49″ W. long., to 54°12′57″ N. lat., 134°23′47″ W. long., to 54°12′45″ N. lat., 134°25′03″ W. long., to 54°07′30″ N. lat., 134°56′24″ W. long., to 54°00′01″ N.

lat., 135°45'57" W. long., to 53°28'27" N. lat., 138°45'20" W. long.

(ii) Unless restricted in this section or under the terms of a subsistence fishing permit, fish may be taken in the Southeastern Alaska Area at any time.

(iii) Herring may be taken at any time except that vessels licensed as commercial fishing vessels may not be used to take herring for personal use in any district that is open for commercial herring fishing for 72 hours before, during and 72 hours after any open commercial herring fishing period for that district when the vessel has aboard it any person holding a Southeastern Alaska Area winter bait herring or herring sac roe interim-use or entry permit.

(iv) Coho salmon may be taken from Salt Lake and Mitchell Bay from August 1 through October 31.

(v) From July 7 through July 31, sockeye salmon may be taken in the waters of Klawock Inlet enclosed by a line from Klawock Light to the Klawock Oil Dock, the Klawock River, and Klawock Lake only from 8:00 a.m. Monday until 5:00 p.m. Friday.

(vi) Finfish may be taken for subsistence purposes only as provided in this section:

(A) Klukwan: Only those residents domiciled west of the Haines highway between Mile 20 and Mile 24 and east of the Chilkat River may take herring, herring spawn, and bottomfish in waters of Section 15-A; and salmon and smelt in all waters of the Chilkat River and Chilkat Inlet north of the latitude of Glacier Point, and in the Chilkoot River, Lutak Inlet, and Chilkoot Inlet north of the latitude of Battery Point, excluding waters of Taiya Inlet north of the latitude of the tip of Taiya Point.

(B) Haines: Only those residents domiciled in the City and Borough of Haines, excluding residents domiciled in the village of Klukwan and in the drainage of Excursion Inlet, may take herring, herring spawn, and bottomfish in waters of Section 15-A; and salmon and smelt in all waters of the Chilkat River and Chilkat Inlet north of the latitude of Glacier Point, and in the Chilkoot River, Lutak Inlet, and Chilkoot Inlet north of the latitude of Battery Point, excluding waters of Taiya Inlet north of the latitude of the tip of Taiya Point.

(c) Hoonah: Only those residents domiciled in the City of Hoonah and in Chichagof Island drainage on the eastern shore of Port Frederick from Gartina Creek to Point Sophia may take herring, herring spawn, and bottomfish in waters of District 14 east of the longitude of Point Dundas; and salmon, smelt, and dolly varden char in waters of section 14-B and 14-C, in District 13 in waters along the western shore of Yakobi Island east of a line from Cape Spencer Light to Surge Bay Light, and in District 12 in waters of Basket Bay inside a line from 57°39'50" N. lat., 134°53'12" W. long. to 57°39'17" N. lat., 134°53'53" W. long.

(D) Angoon: Only those residents domiciled in the City of Angoon and along the western shore of Admiralty Island north of the latitude of Sand Island, south of the latitude of Thayer Creek, and west of 134°30' W. long., including Killisnoo Island, may take herring, herring spawn, and bottomfish in waters of District 12 between the latitude of Parker Point and the latitude of Point Caution, and in Section 13-C east of the longitude of Point Elizabeth; and salmon and dolly varden char in waters of District 12 south of a line from Fishery Point to South Passage Point and north of the latitude of Point Caution and in waters of Section 13-C east of the longitude of Point Elizabeth.

(E) Sitka: Only those residents of the City and Borough of Sitka domiciled in drainage which empty into Section 13-B north of the latitude of Dorothy Narrows, except those domiciled in the U.S. Coast Guard base on Japonski Island, may take herring and herring spawn in waters of Section 13-B north of the latitude of Aspid Cape; and sockeye salmon in waters of Section 13-A south of the latitude of Cape Edward, in waters of Section 13-B north of the latitude of Redfish Cape, and in waters of Section 13-C.

(F) Kake: Only those residents domiciled in the City of Kake and in Kupreanof Island drainage into Keku Strait south of Point White and north of the Portage Bay boat harbor may take herring, herring spawn, and bottomfish in waters of Section 9-B north of the latitude of Point Ellis, in waters of District 10 west of a line from Pinta Point to Point Pybus, and in waters of District 5 north of 56°40′ N. lat.; and salmon and dolly varden char in Sections 9-A and 9-B in waters north of the latitude of Swain Point, in waters of District 10 west of a line from Pinta Point to False Point Pybus, and in waters of District 5 north of a line from Point Barrie to Boulder Point.

(G) Saxman: Only those residents domiciled in the City of Saxman may take herring and herring spawn in waters of Section 1-F between Point Sykes and Foggy Point to a distance of 2 nautical miles from shore; bottomfish in waters of Section 1-F north of the latitude of the northernmost tip of Mary Island, except waters of Boca de Quadra, and in waters of Section 1-E south of the latitude of Grant Island light; and salmon and dolly varden char in waters of Section 1-C in Checats Cove east of the longitude of Edith Point, in waters of Section 1-D in Yes Bay north of a line from Syble Point to Bluff Point, in Section 1-E in waters of Helm Bay north of the latitude of Helm Point and in waters of the Naha River and Roosevelt Lagoon, and in Section 1-F in waters of George Inlet north of 55°26′ N. lat. and in Boca de Quadra in waters of Sockeye Creek and Hugh Smith Lake within 500 yards of the terminus of Sockeye Creek.

(H) Kasaan: Only those residents domiciled in the City of Kasaan and in the drainage of the southeastern shore of the Kasaan Peninsula west of 132°20′ W. long. and east of 132°25′ W. long. may take herring and herring spawn in waters of District 2 north of the latitude of the northernmost tip of Chasina Point and west of a line from the northernmost tip of Chasina Point to the easternmost tip of Grindall Island to the easternmost tip of the Kasaan Peninsula, and in waters of Section 3-B in San Alberta Bay north of the latitude of the southernmost tip of Cape Suspiro and east of 133°20′ W. long.; and salmon, dolly varden char, and bottomfish in waters of District 2 north of the latitude of the northernmost tip of Chasina Point and west of a line from the northernmost tip of Chasina Point to the easternmost tip of Grindall Island to the easternmost tip of the Kasaan Peninsula.

(I) Klawock: Only those residents domiciled in the City of Klawock and on Prince of Wales Island within the boundaries of the Kalwock Heenya Corporation land holdings as they exist in January 1989 may take herring and herring spawn in waters of Section 3-B in San Alberta Bay north of the latitude of the southernmost tip of Cape Suspiro and east of 133°20′ W. long., and in waters of Section 3-A in Tlevak Strait north of the latitude of High Point and south of the latitude of Eolus Point; bottomfish in waters of Section 3-B; and salmon, dolly varden char, and steelhead trout in Section 3-B in waters east of line from Point Ildefonso to Tranquil Point and in waters of Warm Chuck Inlet north of a line from a point on Hecata Island at 55°44′ N. lat., 133°25′ W. long. to Bay Point, and in Section 3-C in waters of Karheen Passage north of 55°48′ N. lat. and east of 133°20′ W. long. and in waters of Sarkar Cove and Sarkar Lakes.

(J) Craig: Only those residents domiciled in the City of Craig and on Prince of Wales Island within the boundaries of the Shan Seet Corporation land holdings as they exist in January 1989 may take herring and herring spawn in waters of Section 3-B in San Alberta Bay north of the latitude of the southernmost tip of Cape Suspiro and east of 133°20′ W. long., and in waters of Section 3-A in Tlevak Strait north of the latitude of High Point and south of the latitude of Eolus Point; bottomfish in waters of Section 3-B; and salmon, dolly warden char, and steelhead trout in Section 3-B in waters east of a line from Point Ildefonso to Tranquil Point and in waters of Warm Chuck Inlet north of a line from a point of Hecata Island at 55°44′ N. lat., 133°25′ W. long. to Bay Point, and in Section 3-C in waters of Karheen Passage north of 55°48′ N. lat. and east of 133°20′ W. long. and in waters of Sarkar Cove and Sarkar Lakes.

(K) Hydaburg: Only those residents domiciled in the townsite of Hydaburg may take herring and herring spawn in waters of Section 3-A in Tlevak Strait north of the latitude of High Point and south of the latitude of Eolus Point, and in waters of Section 3-B in San Alberta Bay north of the latitude of the southernmost tip of Cape Suspiro and east of 133°20′ W. long.; bottomfish in waters of Section 3-A, and in waters of Section 3-B south of the latitude of Bocas Point, excluding Port Refugio; and salmon and dolly varden char in waters of Section 3-A and in waters of District 2 in Nichols Bay north of 54°42′ 07″ N. lat.

(vii) Fish may be taken by gear previously listed except as may be restricted under the terms of a subsistence fishing permit and except as follows:

(A) In District 13, Redoubt Bay, gill net or seine gear may not be used to take salmon in any waters of the bay closed to commercial salmon fishing;

(B) Set gill nets may not be used to take salmon except in the mainstream and side channels, but not the tributaries, of the Chilkat River from the terminus to one mile upstream of Wells Bridge;

(C) Beach seines and gaffs only may be used to take coho salmon during the season and including coho salmon which may be taken from Salt Lake and Mitchell Bay from August 1 through October 31.

(viii) The following waters are closed to subsistence salmon fishing: in District 15, saltwaters of Lynn Canal including Chilkat, Chilkoot and Lutak Inlets, during the closed period of the commercial salmon net fishery in the district, except that salmon may be taken in saltwaters of Lutak Inlet on the Saturday before any period that the commercial salmon net fishery is open in the inlet to the terminus of the Chilkoot River.

(ix) Salmon, trout, char and herring spawn on kelp may be taken only under authority of a subsistence fishing permit.

(x) Permits will not be issued for taking chinook or coho salmon, except for coho salmon as provided in Salt Lake and Mitchell Bay from August 1 through October 31, but chinook or coho salmon taken incidentally by gear operated under terms of a subsistence permit for other salmon are legally taken and possessed for subsistence purposes. The holder of a subsistence salmon fishing permit must report and chinook or coho salmon taken in this manner on his or her permit calendar.

(xi) In the Chilkat River, the subsistence fishing permit holder shall be physically present at the net while it is fishing.

(xii) Subsistence salmon fishing permits for the fishery provided for Salt Lake and Mitchell Bay will be issued only to those persons domiciled in Angoon and only one permit will be issued for a household. The number of coho salmon that may be taken on a permit will be specified by the Alaska Department of Fish and Game after it has assessed the level of effort that will be involved in that fishery.

(xiii) When issuing a herring spawn on kelp subsistence fishing permit, ADF&G may specify on the permit the times and locations for harvesting and the species of kelp that may be taken. The annual possession limit for herring spawn on kelp is 32 pounds for an individual or 158 pounds for a household of two or more persons. ADF&G will, in its discretion, issue an additional permit for herring spawn on kelp above the annual possession limit if harvestable surpluses of herring spawn on kelp are available.

(xiv) Before July 4, subsistence salmon fishing permits may be operated in Sitkoh Bay only by residents of Angoon. On and after July 4, subsistence salmon fishing permits may be operated in Sitkoh Bay by residents of both Angoon and Sitka.

(xv) The Alaska Department of Fish and Game shall not issue a permit for the taking of steelhead trout, but steelhead trout taken incidentally by gear operated under the terms of a subsistence permit for salmon are legally taken and possessed for subsistence purposes. The holder of a subsistence salmon permit must report any steelhead trout taken in this manner on his or her permit calendar.

(xvi) Salmon, trout, or char taken incidentally by gear operated under the terms of a subsistence permit for salmon are legally taken and possessed for subsistence purposes. The holder of a subsistence salmon permit must report any salmon, trout, or char taken in this manner on his or her permit calendar.

(xvii) Subsistence fishermen shall immediately remove the dorsal fin of all salmon when taken.

(xviii) In the waters of the Klawock Inlet enclosed by a line from Klawock Light to the Klawock Oil Dock, no person may subsistence salmon fish from a vessel that is powered by a motor of greater than 35 horsepower.

(xix) no person may possess subsistence-taken and sport-taken salmon on the same day.

§242.25 [Reserved]

§242.26 Subsistence shellfish.

(a) Regulations in this section apply to subsistence fishing on public lands for dungeness crab, king crab, tanner crab, shrimp, clams, abalone and other types of shellfish or their parts. The descriptions of legal types of gear and definitions in §242.24(c) are applicable to the regulations of this section (derived from 5AAC 02.001).

(b) Shellfish may be taken for subsistence uses at any time in any area of the public lands by any method unless restricted by the subsistence fishing regulations of this section and §242.24 (derived from 5 AAC 0.2.005).

(c) Methods, means, and general restrictions. (1) The bag limit specified herein for a subsistence season for a species and the state bag limit set for a state general season for the same species are not cumulative. This means that a person or designated group who has taken the bag limit for a particular species under a subsistence season specified herein may not after that, take any additional shellfish of that species under any other bag limit specified for a State general season.

(2) Unless otherwise provided in this section, the following are legal types of gear for subsistence fishing (derived from 5 AAC 02.010):

(i) Gear specified in § 242.24(c);

(ii) Jigging gear which consists of a line or lines with lures or baited hooks which are operated during periods of ice cover from holes cut in the ice and which are drawn through the water by hand;

(iii) A spear which is a shaft with a sharp point or fork-like implement attached to one end, used to thrust through the water to impale or retrieve fish and which is operated by hand;

(iv) A lead which is a length of net employed for guiding fish into a seine or a length of net or fending employed for guiding fish into a fishwheel, fyke net, or dip net;

(3) It is prohibited to buy or sell subsistence-taken shellfish, their parts, or their eggs, unless otherwise specified in this section.

(4) The use of explosives and chemicals is prohibited except that chemical baits or lures may be used to attract shellfish.

(5) Subsistence fishing by the use of a line attached to a rod or pole is prohibited except when fishing through the ice in the Bearing Sea.

(6) Each subsistence fisherman shall plainly and legibly inscribe his/her first initial, last name and address on a keg or buoy attached to unattended subsistence fishing gear. Subsistence fishing gear may not display a permanent Alaska Department of Fish and Game vessel license number.

(7) A side wall of all subsistence shellfish pots must contain an opening with a perimeter equal to or exceeding one-half of the tunnel eye opening perimeter. The opening must be laced, sewn, or secured together by untreated cotton twine or other natural fiber no larger than 120 thread. Dungeness crab and shrimp pots may have the pot lid tied down straps secured to the pot at one end by untreated cotton twine no larger than 120 thread, as a substitute for the above requirement.

(8) No person may mutilate or otherwise disfigure a crab in any manner which would prevent determination of the minimum size restrictions until the crab has been processed or prepared for consumption.

(9) In addition to the marking requirements in paragraph (c)(6) of this subsection, kegs or buoys attached to subsistence crab pots must also be inscribed with the name or U.S. Coast Guard number of the vessel used to operate the pots.

(10) No more than five pots per person and 10 pots per vessel may be

used to take crab, except as specified in paragraph (f) of this section.

(11) In the subsistence taking of shrimp in the Southeastern Alaska-Yakutat and Prince William Sound Areas, no person may use more than 10 pots, and no more than 20 pots may be operated from a vessel. In the subsistence taking of shellfish other than shrimp in the Southeastern Alaska-Yakutat Area, no person may operate more than five pots of any type, and no more than 10 pots of any type may be operated from a vessel.

(d) *Subsistence Take by Commercial Vessels.* No fishing vessel which is commercially licensed and registered for shrimp pot, shrimp trawl, king crab, tanner crab, or dungeness crab fishing may be used for subsistence take during the period starting 14 days before an opening until 14 days after the closure of a respective open season in the area or areas for which the vessel is registered (derived from 5 AAC 02.025).

(e) *Unlawful possession of Subsistence Shellfish.* No person may possess, transport, give, receive or barter subsistence taken shellfish or their parts that the person knows or should know were taken in violation of a Federal or State statute or a regulation promulgated thereunder (derived from 5 AAC 02.030).

(f) *Descriptions of Subsistence Shellfish Areas and Pertinent Restrictions*—(1) Southeastern Alaska-Yakutat Area. (i) The Southeastern Alaska-Yakutat area has as its western boundary the longitude of Cape Suckling (143° 53′ West longitude), its southern boundary the International Boundary at Dixon Entrance, and its seaward boundary the 400-fathom (732 m) depth contour.

(A) District 1: All waters east and north of a line from the southernmost tip of Caamano Point to 54°40′ N. lat., 131°45′ W. long., and north of a line from 54°40′ N. lat., 131°45′ W. long., 54°42′29″ N. lat., 130°36′55″ W. long.

(1) Section 1-A: All waters of Portland Canal north of the latitude of Hattie Island light;

(2) Section 1-B: All waters south of Section 1-A and east and south of a line extending three miles bearing 297°from the range marker located at Foggy Point (54°55′32″ N. lat., 130°58′30″ W. long.) and then south to intersect a line between Barren Island Light and Lord Rock Light, then to Lord Rock Light, and then to the southern boundary of district 1;

(3) Section 1-C: Waters of the district between a line from a point at 55°11′47″ N. lat., 131°05′08″ W. long., located on Point Sykes to a point at 55°12′13″ N. lat., 131°05′42″ W. long., located one-half mile northwest of Point Sykes to Point Alava, and a line from Point Eva to Cactus Point;

(4) Section 1-D: Waters of the district between a line from Point Eva to Cactus Point and a line from Nose Point to Snail Point;

(5) Section 1-E: Waters of the district between a line from Caamano Point to Point Higgins and a line from Nose Point to Snail Point;

(6) Section 1-F: All other waters of the District.

(B) District 2: All waters south of a line from the easternmost tip of Narrow Point to the northermost tip of Lemesusrier Point, west of District 1 and east of a line from Point Marsh Light to 54°40′ N. lat., 132°17′30″ W. long.

(C) District 3: All waters north of a line from Point Marsh Light to 54°40′ N. lat., 132°17′30″ W. long. to the southernmost tip of Cape Muzon and east of a line from the northermost tip of Eagle Point on Dall Island and passing successively through the southernmost tip of Point Arboleda, the northernmost tip of Point San Roque, the southernmost tip of Cape Ulitka, the northeasternmost tip of Cape Lynch to the southwest entrance point of Halibut Harbor on Kosciusko Island, and south of the latitude of Aneskett Point (56°08′50″ N. lat.);

(1) Section 3-A: Waters of the district south 55°15′ N. lat., excluding waters of Meares Passage;

(2) Section 3-B: Waters of the district south of the latitude of Cape Lynch (55°47′ N. lat.) and north of 55°15′ N. lat., including all waters of Meares Passage;

(3) Section 3-C: Waters of the district north of the latitude of Cape Lunch (55°47′ N. lat.);

(D) District 4: All waters north of Cape Muzon, west of District 3, and south of a line from Helm Point on Coronation Island to Cape Lynch.

(E) District 5: Waters of Sumner Strait, north and east of a line from Cape Decision of Helm Point to Cape Lynch to the southwest entrance point of Halibut Harbor, and north of the latitude of Aneskett Point, west of a line from Point Baker to Point Barrie, and south of a line from Point Camden to Salt Point Light in Keku Strait.

(F) District 6: All waters of Clarence Strait north of a line from Narrow Point to Lemesuriere Point to Ernest Point to the most southerly point on Etolin Island. Stikine Strait south of the latitude of Round Point, Sumner Strait west of a line from Point Alexander to Low Point, and east of a line from Point Baker to Point Barrie, Wrangell Narrows south and west of a line from Prolewy Point to the northern tip of Mitkof Island, and all waters of Duncan Canal;

(1) Section 6-A: Waters north of a line from the tip of Point Colpoys to the tip of Macnamara Point, west of a line from the tip of Low Point to the tip of Point Alexander and east of a line from the tip of Point Barrie to the tip of Point Baker;

(2) Section 6-B: Waters south of a line from the tip of Point Colpoys to the tip of Macnamara Point, north and west of a line from the tip of Luck Point to the tip of Point Stanhope to Lincoln Rock Light to Key Reef Light to Nesbitt Reef Light to the tip of Point Nesbitt.

(3) Section 6-C: Waters enclosed by a line from Lincoln Rock Light to the westernmost point of Screen Islands to the westernmost point of Marsh Island to the westernmost point of Steamer Rocks to Mariposa Rock Buoy to the tip of Point Nesbitt to Nesbitt Reef Light to Key Reef Light to Lincoln Rock Light;

(4) Section 6-D: All other waters of the district.

(G) District 7: All contiguous waters of Ernest Sound and Bradfield Canal east of a the line from Lemesurier Point to Ernest Point to the most southerly point of Etolin Island, Zimovia Strait south of the latitude of Nemo Point, and Eastern Passage and Blake Channel south of a line from Babbler Point to Hour Point;

(1) Section 7-A: Waters of the district north of the latitude of Point Eaton;

(2) Section 7-B: Waters of the district south of the latitude of Point Eaton;

(H) District 8: Waters of Frederick Sound south of a line from Wood Point to becon Point (excluding Wrangell Narrows), Stikine Strait, Sumner Strait, Zimovia Strait and Eastern Passage inside a line from Point Alexander to Low Point to Round Point to Nemo Point to Hour Point to Babbler Point;

(1) Section 8-A: Waters of the district north of a line from Blaquiere Point to Kakwan Point.

(2) Section 8-B: Waters of the district south of a line from Blaquire Point to Kakwan Point.

(I) District 9: All waters of Frederick Sound and Chatham Strait south of the latitude of the southernmost tip of Point Gardner, south of the latitude of the southernmost tip of Elliott Island and west of a line from the southernmost tip of Elliott Island to the westernmost tip of Point Macartney, north and west of a line from the nothernmost tip of Point Camden to Salt Point Light, north and east of a line from the southernmost tip of Cape Decision to the southernmost tip of Helm Point to the westernmost tip of Hazy Islands to Cape Ommaney Light;

(1) Section 9-A: Waters of the district west of a line from Nation Point on Coronation Island to the latitude of Point Gardner two miles west of Point Gardner.

(2) Section 9-B: Waters of the district east of a line from Nation Point on Coronation Island to the latitude of Point Gardner two miles west of Point Gardner.

(J) District 10: Frederick Sound, Stephens Passage and contiguous waters north of a line from Beacon Point to Wood Point, east of a line from Point Macartney to the southern tip of Elliott Island, north of the latitude of the southern tip of Elliott Island, Seymour Canal south of 57°37′ N. lat., and south of a line from Point League to Point Hugh.

(K) District 11: Stephens Passage and contiguous waters north of a line from Point League to Point Hugh and Seymour Canal north of 57°37′ N. lat., south of the latitude of Little Island Light, and east of a line from Little Island Light to Point Retreat Light;

(*1*) Section 11-A: Waters of the district north and west of a line from a point at 58°12′20″ N. lat., 134°10′ W. long., to the Coast Guard marker and Light on Point Arden;

(*2*) Section 11-B: Waters of the district north of the latitude of Midway Island Light and south and east of a line from a point at 58°12′20″ N. lat., 134°10′ W. long., to the Coast Guard marker and light on Point Arden.

(*3*) Section 11-C: Waters of the District south of the latitude of Midway Island Light to a line from Point League to Point Hugh;

(*4*) Section 11-D: All waters of Seymour Canal north of 57°37′ N. lat.

(L) District 12: All waters of Lynn Canal and Chatham Strait south of the latitude of Little Island Light to the latitude of Point Gardner, west of a line from Little Island Light to Point Retreat Light, east of a line from Point Couverdon to Point Augusta, and east of a line from Point Hayes to Point Thacher.

(*1*) Section 12-A: All waters of Chatham Strait south of the latitude of Point Couverden (58°11′25″ N. lat.) to the latitude of Point Gardner (57°01′ N. lat.), east of a line from the southeasternmost tip of Point Hayes to the northernmost tip of Point Thacher:

(*2*) Section 12-B: All waters of Lynn Canal south of the latitude of Little Island Light, west of a line from Little Island Light to Point Retreat Light and north of the latitude of Point Couverden (58°11′25″ N. lat.).

(M) District 13: All waters north of the latitude of the southernmost tip of Helm Point and west of a line from the southernmost tip of Helm Point to the westernmost tip of Hazy Island to Cape Ommaney Light, south of a line projecting west from the southernmost tip of Cape Spencer through Yakobi Rock to Yakobi Island, south of a line from the northernmost tip of Soapstone Point to the westernmost tip of Column Point, and west of a line from the southernmost tip of Point Hayes to the northernmost tip of Point Thacher.

(*1*) Section 13-A: All waters north of 57°16′ N., lat. and those waters of Peril Strait south of the latitude of Pogibshi Point (57°30′30″ N. lat.);

(2) Section 13-B: All waters south of 57°16′ N. Lat.;

(*3*) Section 13-C: Waters of the district north of the latitude of Pogibshi Point and west of a line from Point Hayes to Point Thatcher in Peril Strait.

(N) District 14: All waters of Icy Strait west of a line from the southernmost tip of Point Couverden to Point Augusta Light, east of a straight line from the southernmost tip of Cape Spencer through Yakobi Rock to Yakobi Island and north of a line from the northernmost point of Soapstone Point to the westernmost point of Column Point;

(*1*) District 14-A: Waters of the district west of a line beginning at 58°13′ N. lat., 135°57′ W. long. to Lemesurier Island to Point Carolus;

(*2*) Section 14-B: Waters of the district east of a line beginning 58°13′ N. lat., 135°57′ W. long. to Lemesurier Island to Point Carolus and west of a line from Point Sophia to Excursion Point at 58°22′30″ N. lat., 135°29′ W. long.;

(*3*) Section 14-C: Waters of the district east of a line from Point Sophia to Excursion Point at 58°22′30″ N. lat., 135°29′ W. long.

(O) District 15: All waters of Lynn Canal north of the latitude of Little Island Light;

(*1*) Section 15-A: All waters of the district north of the latitude of Sherman Rock Light:

(*2*) Section 15-B: Waters of Berners Bay east of a line from Point St. Mary to Point Bridget;

(*3*) Section 15-C: All waters of the district south of the latitude of Sherman Rock Light, except for the waters of Section 15-B.

(P) District 16: All waters north of a line projecting west from the southernmost tip of Cape Spencer and south of a line projecting southwest from the westernmost tip of Cape Fairweather.

(Q) Dixon Entrance District: All waters east of 138°45′20″ W. long., south of the southern boundaries of Districts 1, 2, 3 and 4 and north of a line from 54°43'30" N. lat.,130°37'37" W. long., to 54°43'24" N. lat.,130°37'39" W. long., to 54°43'15" N. lat.,130°37'44" W. long., to 54°43'00" N. lat.,130°37'55" W. long., to 54°42'58" N. lat.,130°37'57" W. long., to 54°42'47" N. lat.,130°38'06" W. long., to 54°42'22" N. lat.,130°38'26" W. long., to 54°41'09" N. lat.,130°38'58" W. long., to 54°39'54" N. lat.,130°38'58" W. long., to 54°39'14" N. lat.,130°39'18" W. long., to 54°39'48" N. lat.,130°41'35" W. long., to 54°40'03" N. lat.,130°42'22" W. long., to 54°40'42" N. lat.,130°44'43" W. long., to 54°40'41" N. lat.,130°44'59" W. long., to 54°40'46" N. lat.,130°45'51" W. long., to 54°41'06" N. lat.,130°48'31" W. long., to 54°41'05" N. lat.,130°49'17" W. long., to 54°41'21" N. lat.,130°53'18" W. long., to 54°41'26" N. lat.,130°53'39" W. long., to 54°42'27" N. lat.,130°56'18" W. long., to 54°42'34" N. lat.,130°57'09" W. long., to 54°43'00" N. lat.,130°57'41" W. long., to 54°43'46" N. lat.,130°58'55" W. long., to 54°44'12" N. lat.,130°59'44" W. long., to 54°45'39" N. lat.,131°03'06" W. long., to 54°46'16" N. lat.,131°04'43" W. long., to 54°42'11" N. lat.,131°13'00" W. long., to 54°40'52" N. lat.,131°13'54" W. long., to 54°39'09" N. lat.,131°16'17" W. long., to 54°36'52" N. lat.,131°19'22" W. long., to 54°29'53" N. lat.,131°33'48" W. long., to 54°30'32" N. lat.,131°38'01" W. long., to 54°28'18" N. lat.,131°45'20" W. long., to 54°26'41" N. lat.,131°49'28" W. long., to 54°21'51" N. lat.,132°02'54" W. long., to 54°24'52" N. lat.,132°23'39" W. long., to 54°24'41" N. lat.,132°24'29" W. long., to 54°24'41" N. lat.,132°24'35" W. long., to 54°24'39" N. lat.,132°26'51" W. long., to 54°24'34" N. lat.,132°38'16" W. long., to 54°24'54" N. lat.,132°39'46" W. long., to 54°26'00" N. lat.,132°44'12" W. long., to 54°27'07" N. lat.,132°49'35" W. long., to 54°27'07" N. lat.,132°50'42" W. long., to 54°28'25" N. lat.,132°55'54" W. long., to 54°28'32" N. lat.,132°56'28" W. long., to 54°30'03" N. lat.,133°07'00" W. long., to 54°30'10" N. lat.,133°07'43" W. long., to 54°30'42" N. lat.,133°11'28" W. long., to 54°31'02" N. lat.,133°14'00" W. long., to 54°30'06" N. lat.,133°16'58" W. long., to 54°22'01" N. lat.,133°44'24" W. long., to 54°20'33" N. lat.,133°49'21" W. long., to 54°15'40" N. lat.,134°19'49" W. long., to 54°12'57" N. lat.,134°23'47" W. long., to 54°12'45" N. lat.,134°25'03" W. long., to 54°07'30" N. lat.,134°56'24" W. long., to 54°00'01" N. lat.,135°45'57" W. long., to 53°28'27" N. lat.,138°45'20" W. long.

(R) Yakataga District: All waters of Alaska between the longitude of Cape Suckling (143°53' W. long.) and the longitude of Icy Cape (141°42' W. long.).

(S) Yakutat District: All waters of Alaska between the longitude of Icy Cape (141°42' long.) and a line projected southwest from the westernmost tip of Cape Fairweather.

(ii) Shellfish may be taken for subsistence purposes only as provided in this subsection.

(A) Yakutat: Only those residents domiciled east of Yakutat Bay, including the islands within Yakutat Bay, west of the Situk River drainage, and south of and including Knight Island may take shellfish in waters of Yakutat Bay, including Russell Fiord, within a line from the westernmost point of Point Manby to the southernmost point of Ocean Cape.

(B) Klukwan: Only those residents domiciled west of the Haines highway between Mile 20 and Mile 24 and east of the Chilkat River may take shellfish, except king and tanner crab, in waters of Section 15-A.

(C) Haines: Only those residents domiciled in the City and Borough of Haines, excluding residents domiciled in the village of Klukwan and in the drainages of Excursion Inlet, may take shellfish, except shrimp, king crab, and tanner crab, in waters of section 15-A.

(D) Hoonah: Only those residents domiciled in the City of Hoonah and in Chichagof Island drainages on the eastern shore of Port Frederick from Gartina Creek to Point Sophia may take shellfish, except shrimp, king crab, and tanner crab, in waters of District 14 east of the longtitude of Point Dundas.

(E) Angoon: Only those residents domiciled in the City of Angoon and along the western shore of Admiralty Island north of the latitude of Sand Island, south of the latitude of Thayer Creek, and west of 134°30' West longitude, including Killisnoo Island, may take shellfish, except shrimp, king crab, and tanner crab, in waters of District 12 between the latitude of Parker

Point and the latitude of Point Caution, and in section 13-C east of the longitude of Point Elizabeth.

(F) Kake: Only those residents domiciled in the City of Kake and in Kupreanof Island drainages into Keku Strait south of Point White and north of the Portage Bay boat harbor may take shellfish, except shrimp, king crab, and tanner crab, in waters of section 9-B north of the latitude of Point Ellis, in waters of District 10 west of a line from Penta Point to Point Pybus, and in waters of District 5 north of 56°40′ North latitude.

(G) Saxman: Only those residents domiciled in the City of Saxman may take shellfish, except shrimp, king crab, and tanner crab, in waters of section 1-F north of the latitude of the northernmost tip of Mary Island, excepts waters of Boca de Quandra, and in waters of section 1-E south of the latitude Grand Island light.

(H) Kasaan: Only those residents domiciled in the City of Kasaan and in the drainages of the southeastern shore of the Kasaan Peninsula west of 132°20′ West longitude and east of 132°25′ West longitude may take shellfish, except shrimp, king crab, and tanner crab, in District 2 north of the latitude of the northermost tip of Chasina Point and west of a line from the northernmost tip of Chasina Point to the easternmost tip of Grindall Island to the easternmost tip of the Kasaan Peninsula.

(I) Klawock: Only those residents domiciled in the City of Klawock and on Prince of Wales Island within the boundaries of the Klawock Heenya Corporation as they existed in January 1989 may take shellfish, except shrimp, king crab, and tanner crab, in waters of section 3-B.

(J) Craig: Only those residents domiciled in the City of Craig and on Prince of Wales Island within the boundaries of the Shan Seet Corporation as they existed in January 1989 may take shellfish, except shrimp, king crab, and tanner crab, in waters of section 3-B.

(K) Hydaburg: Only those residents domiciled in the townsite of Hydaburg may take shellfish, except shrimp, king crab, and tanner crab, in waters of section 3-B south of the latitude of Bocas Point, excluding Port Refugio.

(iii) No commercially licensed and registered shrimp fishing vessel may be used to take shrimp for subsistence purposes in Districts 6, 7, 8 and 10 from February 15 through April 30.

(iv) In the subsistence taking of dungeness crab.

(A) The daily bag and possession limit is 20 crab person except that, in waters of Thorne Bay west of the longitude of the southernmost tip of Thorne Head, the daily bag and possession limit is five crab;

(B) Only make crab six and one-half inches or greater in shoulder width may be taken or possessed;

(C) Spears and gaffs may not be used in Districts 1 through 15;

(D) Live holding facilities used to accumulate or pool multiple bag limits by an individual or individuals are not allowed.

(v) In the subsistence taking of king crab.

(A) In the Southeastern Alaska Area the daily bag and possession limit is six crab per person and only male crab may be taken;

(B) In that portion of the Southeastern Alaska-Yakutat Area east of the longitude of Cape Spencer (136°39′ 30 seconds West longitude)

(*1*) Red and blue king crab may not be taken from April 1 through June 30;

(*2*) Only make red and brown king crab seven inches and male blue king crab six and one-half inches or larger in width of shell may be taken or possesed;

(C) In the Yakutat Area the daily bag and possession limit if two crab per person and only male crab may be taken;

(D) An operator of a commercially licensed and registered king crab fishing vessel shall obtain a permit from the Alaska Department of Fish and Game before taking king crab for subsistence purposes in waters of Yakutat Bay enclosed by a line from the westernmost tip of Ocean Cape to the easternmost tip of Point Manby during the open commercial king crab fishing season; the Alaska Department of Fish and Game may set out requirements in the permit for the conservation of the king crab resource and to ensure compliance with other applicable fishing laws and regulations.

(vi) In the subsistence taking of tanner crab the possession limit is 30 crab per person per day.

(vii) In the subsistence taking of geoducks the bag limit is six geoducks per person per day.

(viii) In the subsistence taking of abalone

(A) The possession limit is 50 abalone per person.

(B) The minimum allowed size is three inches (76 mm) in greatest diameter of shell, except in district 13 the minimum legal size is three and one-half inches (89 mm) in greatest diameter of shell;

(C) Subsistence fishing is prohibited while engaged in commercial abalone fishing; prior to engaging in the subsistence fishery, commercial abalone fishermen must return the commercial permit to the Alaska Department of Fish and Game and land the commercial catch in possession.

(2) *Prince William Sound Area.* The Prince William Sound Area has as its western boundary the longitude of Cape Fairfield (148°50′ West longitude), its eastern boundary the longitude of Cape Suckling (143°53′ West longitude) and its seaward boundary the 400-fathom (732 m) depth contour.

(i) In the subsistence taking of shrimp in addition to marking requirements otherwise specified, each key or buoy must also be plainly and legibly inscribed with the vessel name or U.S. Coast Guard number of the vessel used to operate the pot.

(ii) In the subsistence taking of dungeness crab

(A) The daily bag and possession limit is 20 crab per person;

(B) The minimum legal size is six and one-half inches (165 mm) in shoulder width;

(C) Only male crab may be taken.

(iii) In the subsistence taking of tanner crab.

(A) The daily bag and possession limit is 20 male crab per person;

(B) Only male tanner crab 5.3 inches or greater in width of shell may be taken or possessed.

(iv) In the subsistence taking of king crab

(A) The daily bag and possession limit is six male crab per person;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a two-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) The minimum legal size is 5.9 inches in width of shell for blue king crab and seven inches in width of shell for red and brown king crab.

(v) In waters east of 146° West longitude and south of a line from the southernmost tip of point Bentinck, to the southernmost tip of Point Whitshed

(A) Razor clams may be taken only under the authority of a subsistence razor clam fishing permit;

(B) Only razor clams four and one-half inches or longer in length of shell may be taken or possessed.

(3) *Cook Inlet Area.* (i) The Cook Inlet Area has as its eastern boundary the longitude of Cape Fairfield (1487°50′ West longitude) and its southern boundary the latitude of Cape Douglas (58°52′ North latitude).

(ii) Northern District: North of a line extending from Boulder Point at 60°46′23″ N. lat., to Shell Platform C, then to a point on the west shore at 60°46′23″ N. lat.

(A) Eastern Subdistrict: All waters south of the latitude of Point Possession, north of the latitude of Boulder Point, and east of a line form Shell Platform C to a point at 61°02′40″ N. Lat., 150°40′W. long.;

(B) General Subdistrict: All waters of the Northern District not specified above.

(iii) Central District: All waters between a line extending from Boulder Point at 60°46′23″ N. lat., to Shell Platform C, to a point on the west shore at 60°46′23″ N. lat., and the latitude of Anchor Point Light (59°46′12″ N. lat.)

(A) Kustatan Subdistrict: All waters within a line from the Drift River terminal to the South Kalgin Island Light at 60° 20′ 48″ N. lat., 152° 04′ 30″ W. long., northerly along the west side of Kalgin Island to Northwest Point at 60° 31′ 15″ N. lat., 155° 55′ 45″ W. long., bearing 43° to Shell Platform C, to a point on the west shore at 60° 46′ 23″

N. lat., excluding the waters of the Kalgin Island Subdistrict;

(B) Upper Subdistrict: All waters within a line from Boulder Point to shell Platform C, then bearing 223° to Northwest Point at 60° 31′ 15″ N. lat., 151° 55′ 45″ W. long., then following the eastern shore of Kalgin Island to the South Kalgin Island Light at 60° 20′ 48″ N. lat., 152° 09′ 42″ W. long., then bearing 142° to the Ninilchik small boat harbor, excluding the waters of the Kalgin Island Subdistrict;

(C) Kalgin Island Subdistrict: All waters within a line encompassing Kalgin Island within one mile of mean lower low water as delineated by the most recent U.S. Coast and Geodetic Survey chart number 8553;

(D) Lower Subdistrict: Waters between a line extending from Ninilchik small boat harbor, then bearing 136° to the South Kalgin Light at 60° 20′ 48″ N. lat., 152° 09′ 42″ W. long., then bearing 236° to a point one nautical mile from the bluff on the northwestern shore of Chisik Island at 60° 10′ 30″ N. lat., 152° 35′ W. long., then in a southerly direction one nautical mile seaward of the mean high water line to a point at the southern end of the silver salmon set-net area at 59° 58′ 5″ N. lat., then bearing 270° to the shore, and the latitude of the Anchor Point Light, excluding the waters of the Chinta Bay and the Kalgin Islands Subdistricts;

(E) Western Subdistrict: Waters within a line from the Drift River terminal to the South Kalgin Light at 60° 20′ 48″ N. lat., 152° 09′ 42″ W. long., then bearing 236° to a point one nautical mile from the bluff on the northeast shore of Chisik Island at 60° 10′ 30″ N. lat., 152° 35′ W. long., then in a southerly direction one nautical mile seaward of the mean high water line to a point at the southern end of the silver salmon set-net area at 59° 58′ 05″ N. lat., then bearing 270° to the shore, excluding the waters of the Kalgin Island Subdistrict;

(F) Chinitna Bay Subdistrict: All waters in Chinitna Bay west of a line from Spring Point to Sea Otter Point.

(iv) Southern District: All waters enclosed by a line from the westernmost tip of Anchor Point west to 59° 46′ 15″ N. lat., 162° 20′ W. long., then south to 59° 03′ 25″ N. lat., 152° 20′ W. long., then in a northeasterly direction to the tip of Cape Elizabeth, then from the tip of Cape Elizabeth to the tip of Point Adam;

(A) Port Graham Subdistrict: All waters east of the longitude of Point Bede and south of the latitude of Point Pogibshi;

(B) Seldovia Bay Subdistrict: All waters south of a line from Point Naskowhak to Seldovia Point;

(C) Barbara Creek Subdistrict: All waters between the longitudes of Seldovia Point and Nubble Point and south of 59° 30′ N. lat.;

(D) Tutka Bay Subdistrict: All waters east of the longitude of Nubble Point and south of the latitude of Anisom Point on the eastern shore of Eldred Passage at 59° 32′ 06″ N. lat., 141° 27′ 55″ W. long., including Kasitsna Bay;

(E) Humpy Creek Subdistrict: All waters east of a line from an Alaska Department of Fish and Game marker on Glacier Spit at 59° 38′ N. lat., 151° 12′ 31″ W. long., to the Northshore Subdistrict line at 59° 38′ 15″ N. lat., 151° 18′ 45″ W. long., and southeast of a line from that point on the Northshore Subdistrict line at 59° 38′ 15″ N. lat., 151° 18′ 45″ W. long., to a point north of Chugachik Island at 59° 45′ N. lat., 151° 02′ 36″ W. long., to a point on the mainland at 59° 44′ 30″ N. lat., 151° 02′ 06″ W. long.

(F) Northshore Subdistrict: All waters north of a line from Coal Point to a point north of Chugachik Island at 59° 45′ N. lat., 151° 02′ 36″ W. long. then northwesterly to a marker one-half statute mile southwest of the terminus of Swift Creek;

(G) China Poot Subdistrict: All waters south of a line from Peterson Point at 59°35′48″ N. lat., 151°16′24″ W. long., to Coal Point on the tip of the Homer Spit at 59°36′06″ N. lat., 151°24′30″ W. long., to 59°32′06″ N. lat., 151°33′05″ W. long. to Anisom Point.

(H) Halibut Cove Subdistict: All waters within a line from a marker on Glacier spit at 59° 38′ N. lat., 151°12′30″ W. long to the intersection of the Northshore Subdistrict line at 59°38′15″ N. lat., 151°18′45″ W. long., to Coal Point to Peterson Point.

(v) Kamishak Bay Distict, All water enclosed by a line from 59°46′15″ N. lat., 153°30′ W. long., then east to 59°46′15″ N. lat., 152°20′ W. long., then south to 59°03′25″ N. lat., 152°20′ W. long., then southwesterly to Cape Douglas (58°52′ N. lat.)

(A) Iniskin Bay Subdistrict: All waters north of a line from a point on the east shore of Iniskin Bay near Scott Island at 59°38′35″ N. lat., 153°25′30″ W. long., to a point north of South Head at 59°37′20″ N. lat., 153°33′30″ W. long.;

(B) Cottonwood Bay Subdistrict: All waters west of a line from South Head north to a point at 59°37′20″ N. lat., 153°33′30″ W. long.;

(C) Ursus Cove Subdistrict: All waters west of the longitude of Ursus Head and north of 59°28′05″ N. lat.;

(D) Rocky Cove Subdistrict: All waters between 59°28′05″ N. lat., and 50°25′ N. lat., and west of 153°40′ W. long.;

(E) Bruin Bay Subdistrict: All waters between 59°25′ N. lat., and 59°20′ N. lat., and west of 153°40′ W. long.;

(F) Kamishak River Subdistrict: All waters east of a line from McNeil Head at 59°07′24″ N. lat., 154°10′24″ W. long. to the mushroom islet at 59°07′45″ N. lat., 154°09′30″ W. long. to the northern tip of Nordyke Island at 59°11′ N. lat., 154°05′ W. long., south of the latitude of the northern tip of Nordyke Island, and west of 153°50′ W. long.;

(G) McNeil River Subdistrict: All waters southwest of a line from McNeil Head to a point of land at 59°09′30″ N. lat., 154°12′45″ W. long.;

(H) Chenik Subdistrict: All waters between 59°20′ N. lat., and the latitude of the northern tip of Nordyke Island at 59°11′ N. lat., 154°05′ W. long., and west of 153°40′ W. long.;

(I) Paint River Subdistrict: All waters south of the latitude of the northern tip of Nordyke Island at 59°11′ N. lat., 154°05′ W. long., west of a line from the northern tip of Nordyke Island to the mushroom islet at 59°07′45″ N. lat., 154°09′30″ W. long. to McNeil Head and east of a line from McNeil Head to a point of land at 59°09′30″ N. lat., 154°12′45″ W. long.;

(J) Douglas River Subdistrict: All waters west of the longitude of Cape Douglas (153°10′30″ W. long.), south of the latitude of the northern tip of Nordyke Island at 59°11′ N. lat., 154°05′ W. long., and east of 153°50′ W. long.

(vi) Barren Island District: All waters enclosed by a line from Cape Douglas (58°2′ N. lat.) to the tip of Cape Elizabeth, then south to 58°52′ N. lat., 151°53′ W. long., then west to Cape Douglas.

(vii) Outer District: All waters enclosed by a line from the tip of Point Adam to the tip of Cape Elizabeth, then south to 58°52′ N. lat., 151°53′ W. long., then east to the longitude of Aligo Point (149°44′33″ W. long.), then north to the tip of Aligo Point.

(A) Koyuktolik Subdistrict: All waters east of the longitude of Point Adam and north of 59°13′55″ N. lat.;

(B) Port Chatham Subdistrict: All waters north of 59°10′ N. lat., and east of 151°50′ W. long.;

(C) Windy Bay Subdistrict: All waters west of a line from 59°12′33″ N. lat., 151°27′30″ W. long., to 59°14′08″ N. lat., 151°26′24″ W. long.;

(D) Rocky Bay Subdistrict: All waters north of a line from 59°14′08″ N. lat., 151°26′24″ W. long., to 59°12′24″ N. lat., 151°91′15″ W. long.; Scurvey Creek Section: all waters northwest of a line from 59°34′30″ N. lat., 151°26′24″ W. long. to a point on the southwest corner of Picnic Harbor at 59°15′05″ N. lat., 151°25′ W. long.;

(E) Port Dick Subdistrict: All waters of Port Dick north of 59°13′12″ N. lat.;

(*1*) Port Dick North Section: All waters of the northern shore of West Arm bounded by a line from the market at 59°18′40″ N. lat., 151°16′50″ W. long., south to a point 300 yards offshore then southeasterly to 59°16′50″ N. lat., 151°05′55″ W. long. then north to the waterfall at 59°16′40″ N. lat.

(*2*) Port Dick South Section: Waters of the subdistrict not included in the Port Dick North Section.

(F) Nuka Island Subdistrict: All waters of Nuka Passage north of a line from Front Point to Nuka Point and south of the latitude of Hardover Point;

(G) East Nuka Subdistrict: All waters of the East Arm of Huka Bay north of the latitude of Harrington Point.

(viii) Eastern District: All waters east of the longitude of Aligo Point (149°44′33″ W. long.), west of the longitude of Cape Fairfield (148°50′ W. long.), and north of 58°52′ N. lat.

(A) Aialik Bay Subdistrict: All waters north of a line from Aligo Point to Aialik Cape;

(B) Resurrection Bay Subdistrict: All waters north of the latitude of Caines Head (59° 59′ N. lat.)

(ix) Except as otherwise in this section, no person may take shellfish for subsistence purposes.

(x) Clams may be taken in the Port Graham Subdistrict only by persons domiciled in the villages of Port Graham and English Bay.

(xi) Clams may be taken on the western beaches of Cook Inlet from the terminus of the Drift River to the terminus of the Crescent River only by persons domiciled in the village of Tyonek.

(xii) No person may take dungeness crab or king crab.

(4) *Kodiak Area.* (i) The Kodiak Area has as its northern boundary the latitude of Cape Douglas (58° 52′ North latitude), its western boundary the longitude of Cape Kumlik (157° 27′ West longitude), its eastern boundary the longitude of Cape Fairfield (148° 50′ West longitude), and its seaward boundary the 300-fathom (549 m) depth contour.

(ii) Shellfish may be taken for subsistence purposes only under the authority of a subsistence shellfish fishing permit.

(iii) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the Alaska Department of Fish and Game before subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section or subsection. The permit shall specify the area and the date the vessel operator intends to fish. No more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(iv) The daily bag and possession limit is 12 dungeness crab per person. Only male dungeness crab may be taken.

(v) In the subsistence taking of king crab

(A) The daily bag and possession limit is six crab per person and only male crab may be taken;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a two-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) No more than five crab pots may be used to take king crab;

(D) King crab may be taken only from June 1 though January 31, except that the subsistence taking of king crab is prohibited in waters 25 fathoms or greater in depth during the period 14 days before and 14 days after open commercial fishing seasons for red king crab, blue king crab, or tanner crab in the location.

(vi) In the subsistence taking of tanner crab

(A) No more than five crab pots may be used to take tanner crab;

(B) From July 15 through February 10, the subsistence taking of tanner crab is prohibited in waters 25 fathoms or greater in depth, unless the commercial tanner crab fishing season is open in the location.

(C) The daily bag and possession limit is 12 crab per person and only male crab may be taken.

(vii) Only those residents domiciled in the Kodiak Island Borough, except those residing on the Kodiak Coast Guard Base, may take king crab in the Kodiak Area. This restriction does not apply to the Semidi Island, the North Mainland, and the South Mainland Sections, as described below:

(A) Semidi Island Section: all waters west of the longitude of Cape Kilokak (156° 19′ West longitude) and east of the longitude of Cape Kumlik (157° 27′ West longitude);

(B) North Mainland Section: all waters north of 58° North latitude and west of a line from 58° 52′ North latitude, 152° 45′ West longitude to 58° North latitude, 154° West longitude.

(C) South Mainland Section: all waters south of 58° North latitude, west of a line from 58° North latitude, 154° West Longitude to 57° 15′ North latitude, 155° 30′ West longitude to 56° 45′ Noth latitude, 156° 19′ West longitude, and east of the longitude of Cape Kilokak (156° 19′ West longitude.)

(5) *Alaska Peninsula-Aleutian Islands Area.* (i) The area includes Pacific Ocean waters west of the longitude of Cape Kumlik (157° 27′ West longitude), east of 172° East longitude and shoreward of the 800-fathom (1463 m) depth contour, and Bering Sea waters east of 172° East longitude and south of 54° 36′ North latitude.

(ii) Shellfish may be taken for subsistence purposes only under the authority of a subsistence shellfish fishing permit.

(iii) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the Alaska Department of Fish and Game prior to subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section, or subsection. The permit shall specify the area and the date the vessel operator intends to fish. No more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(iv) The daily bag and possession limit is 12 dungeness crab per person. Only male dungeness crab may be taken.

(v) In the subsistence taking of king crab

(A) The daily bag and possession limit is six crab per person and only male crab may be taken;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a two-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) Crab may be taken only from June 1 through January 31.

(vi) The daily bag and possession limit is 12 tanner crab per person. Only male crab may be taken.

(6) *Bering Sea Area.* (i) The area includes the waters of the Bering Sea and Chukchi Sea north of 54°36′ North latitude, east of a line from 54°36′ North latitude, 171°23′ East longitude, to 65°32′ North latitude, 168°55′ West longitude to 68°21′ North latitude, 168°55′ West longitude (the U.S.-Russia Convention Line of 1867) and south of the latitude of Point Hope (68°21′ North latitude).

(A) Pribilof District: Waters of the Bering Sea area south of the latitude of Cape Newenham (58°39′ North latitude).

(B) Northern District: Waters of the Bering Sea area north of the latitude of Cape Newenham (58°39′ North latitude).

(*1*) Norton Sound Section: Waters east of 168° West longitude, north of the latitude of Cape Romanzof (61°49′ North latitude), and south of the latitude of Cape Prince of Wales (65°36′ North latitude);

(*2*) Saint Matthew Island Section: Waters north of the latitude of Cape Newenham (58°39′ North latitude) and south of the latitude of Cape Romanzof (61°49′ North latitude);

(C) Saint Lawrence Island Section: All remaining waters of the district.

(ii) In waters south of 60° North latitude, shellfish may be taken for subsistence purposes only under the authority of a subsistence shellfish fishing permit.

(iii) In that portion of the area north of the latitude of Cape Newenham, shellfish may only be taken by shovel, jigging gear, pots and ring net.

(iv) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the Alaska Department of Fish and Game prior to subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section or subsection. The permit shall specify the area and the date the vessel operator intends to fish. No more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(v) In waters south of 60° North latitude, the daily bag and possession limit is 12 dungeness crab per person. Only male dungeness crab may be taken.

(vi) In the subsistence taking of king crab:

(A) In waters south of 60° North latitude, the daily bag and possession limit is six crab per person, and only male crab may be taken;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a two-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) In the Norton Sound Section of the Northern District, a subsistence fishing permit is required and may be obtained from a local representative of the Alaska Department of Fish and Game;

(D) In waters south of 60° North latitude, crab may be taken only June 1 through January 31.

(vii) In waters south of 60° North latitude, the daily bag and possession limit is 12 tanner crab, and only males may be taken.

PART 251—LAND USES

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Subpart A—Miscellaneous Land Uses

AUTHORITY: 7 U.S.C. 1011; 16 U.S.C. 518, 551, 678a; Pub. L. 76-867, 54 Stat. 1197.

NATURAL RESOURCES CONTROL

Subpart A—Miscellaneous Land Uses

§ 251.9 Management of Municipal Watersheds.

(a) The Forest Service shall manage National Forest watersheds that supply municipal water under multiple use prescriptions in forest plans (36 CFR Part 219). When a municipality desires protective actions or restrictions of use not specified in the forest plan, within agreements, and/or special use authorizations, the municipality must apply to the Forest Service for consideration of these needs.

(b) When deemed appropriate by the Regional Forester, requested restrictions and/or requirements shall be incorporated in the forest plan without written agreements. Written agreements with municipalities to assure protection of water supplies are appropriate when requested by the municipality and deemed necessary by the Regional Forester. A special use authorization may be needed to effect these agreements.

(c) In preparing any municipal watershed agreement for approval by the Regional Forester or issuing special use authorization to protect municipal water supplies, the authorized forest officer shall specify the types of uses, if any, to be restricted; the nature and extent of any restrictions; any special land management protective measures and/or any necesary standards and guidelines needed to protect water quality or quantity; and any resources that are to be provided by the municipality.

(d) A special use authorization (36 CFR 251.54) is required if the municipality is to use the subject lands, restrict public access, or control resource uses within the watershed. Special use authorizations issued pursuant to this section are subject to the same fee waivers, conditions, and procedures applicable to all other special uses as set forth in Subpart B of this part.

(e) Any municipal wateshed management agreements, special use authorizations, requirements, and/or restrictions shall be consistent with forest plans, or amendments and revisions thereto.

[53 FR 27685, July 22, 1988]

§ 251.10 Prohibition of location of mining claims within certain areas in the Norbeck Wildlife Preserve, South Dakota.

The location of mining claims in such areas within 660 feet of any Federal, State or county road and within such other areas where the location of mining claims would not be in the public interest, as may be designated by the Chief, Forest Service, or the Regional Forester, of Forest Service Region 2, is hereby prohibited. The Director, Bureau of Land Management, Department of the Interior, shall be advised of the areas so designated and notices of the boundaries of such areas posted at conspicuous places in the Preserve, as well as at the county courthouses in Pennington in the cities of Custer and Rapid City, and Custer Counties and the post offices State of South Dakota.

[13 FR 3676, July 1, 1948, as amended at 48 FR 31854, July 12, 1983]

§ 251.11 Governing mining locations under the mining laws of the United States within that portion of the Black Hills National Forest, State of South Dakota, designated as the Norbeck Wildlife Preserve.

(a) Whoever locates a mining claim within the Norbeck Wildlife Preserve must, within 10 days after posting the location notice upon such claim, file a true copy of such location notice with the Forest Supervisor of the Black Hills National Forest at Custer, South Dakota, and further, within 10 days after said location notice is filed for record pursuant to the State laws of South Dakota, a true copy of the recorded location certificate must be filed with said Forest Supervisor.

(b) All mining locators shall in all developments and operations make all reasonable provisions for the disposal of tailings, dumpage, and other deleterious materials or substances in such manner as to prevent obstruction, pollution, or deterioration of the land, streams, ponds, lakes, or springs, as may be directed by the Forest Supervisor.

(c) All slash resulting from cutting or destruction of forest growth incident and necessary to mining operations must be disposed of as directed by the Forest Supervisor.

(d) The cutting and removal of timber, except where clearing is necessary in connection with mining operations or to provide space for buildings or structures used in connection with mining operations, shall be conducted in accordance with the marking rules and timber sale practices applicable to the Black Hills National Forest, and such cutting and removal of timber shall be as directed by the Forest Supervisor.

(e) No use of the surface of a mining claim or the resources therefrom not reasonably required for carrying on mining and prospecting shall be allowed, except under the National Forest rules and regulations, nor shall the locator prevent or obstruct other occupancy of the surface or use of surface resources under authority of National Forest Regulations, or permits issued thereunder, if such occupancy or use is not in conflict with mineral developments.

(f) When any road is to be built for mining purposes upon a mining claim, the locator must apply to the Forest Supervisor for the applicable rules and regulations governing the construction and maintenance of roads within the Black Hills National Forest, and such road will be built in accordance with such specifications and in such locations as the Forest Supervisor may direct.

(g) In conducting mining operations the locator, his agents, representatives, or employees, or other persons whose presence in the area or in the vicinity thereof, is occasioned by such mining operations, shall use due diligence in the prevention and suppression of fires, and shall, when requested by the Forest Supervisor, or his authorized representative, be available for service in the extinguishment and suppression of all fires occurring within the Preserve: *Provided*, That if such fire does not originate through any negligence on the part of the locator, his agents, representatives, or employees, or other persons whose presence in the area or in the vicinity thereof, is occasioned by such mining operations and does not threaten the structures, improvements or property incident to the mining operation, such persons shall be paid for their services at the current rate of pay of fire fighters employed by the United States.

(h) Nothing contained in this section shall be construed to relieve the locator from complying with any requirements of the laws of the State of South Dakota, nor from compliance with or conformity to any requirements of any Federal law or regulation now existing or which later may be enacted or promulgated, and applicable to the subject involved in this section.

[13 FR 4792, Aug. 19, 1948, as amended at 48 FR 31854, July 12, 1983]

§ 251.14 Conditions, rules and regulations to govern exercise of timber rights reserved in conveyance to the United States.

(a) Except as otherwise provided in paragraphs (b) and (c) of this section, in conveyance of lands to the United States under authorized programs of the Forest Service, where owners reserve the right to enter upon the conveyed lands and to cut and remove timber and timber products, said reservations shall be subject to the following conditions, rules and regulations which shall be expressed in and made a part of the deed of conveyance to the United States and such reservations shall be exercised thereunder and in obedience thereto:

(1) Whoever undertakes to exercise the reserved rights, hereinafter called operator, shall give prior written notice to Forest Service and shall submit satisfactory evidence of authority to exercise such rights. Operator shall repair, replace, or restore any improvements owned by the United States or its permittees, damaged or destroyed by the timber operations and he shall restore the land to a condition safe and reasonably serviceable for authorized programs of Forest Service.

(2) In cutting and removing timber and timber products and in locating, constructing and using mills, logging roads, railroads, chutes, landings, camps, or other improvements, no unnecessary damage shall be done to the air, water and soil resources, and to young growth or to trees left standing. All survey monuments and witness trees shall be preserved.

(3) All trees, timber or timber products of species or sizes not specifically reserved which are unnecessarily cut, damaged, or destroyed by operator shall be paid for at double the usual rates charged in the locality for sales

of similar National Forest timber and timber products.

(4) Slash and debris resulting from the cutting, removal, or processing of timber or timber products, or from construction operations, shall be disposed of or otherwise treated by methods acceptable to the Forest Service. Such treatment or disposal shall comply with known air and water quality criteria and standards and include necessary preparatory work such as fireline constructing and snag falling. The timing of log removal and preparatory work shall not unnecessarily delay slash disposal or treatment.

(5) Operator is authorized to construct and maintain buildings, facilities, and other improvements, including roads needed to log the reserved timber. Construction and maintenance plans, designs, and location shall be approved in writing by Forest Service before construction is started.

(6) All buildings, camps, equipment, and other structures or improvements shall be removed from the lands within 6 months from date of completion or abandonment of the operation, unless relieved by Forest Service by issuance of a special-use permit. Otherwise such buildings, camps, equipment, and other structures or improvements shall become the property of the United States, but this does not relieve operator of liability for the cost of removal and restoration of the site.

(7) Nothing in this section shall be construed to exempt operator from any requirements of the laws of the States in which situated; nor from compliance with or conformity to any requirement of any law which later may be enacted and which otherwise would be applicable.

(8) While operations are in progress, operator, his employees, any subcontractors, and their employees, shall take all reasonable and practicable action in the prevention and suppression of fire, and shall be available for service in the suppression of all fires within the reserved area. On any fire not caused by negligence on the part of the operator, Forest Service shall pay operator at fire-fighting rates common in the area or at prior agreed rates for equipment or manpower furnished by operator.

(9) Only one cutting shall be made on any portion of the area on which timber is reserved. Forest Service may permit the cutting of special products, or products the cutting of which is seasonal, on any portion of the area in advance of the cutting of the chief products of the reserved timber. Each reservation of timber shall include a specific period of time within which material may be removed.

(10) Forest Service shall have the right to use any road constructed under the authority of this timber reservation for any and all purposes in connection with the protection and administration of the National Forest.

(11) Operator shall take all reasonable precautions to prevent pollution of the air, soil, and water, in operation hereunder.

(12) All activities by operator in the reserved area shall be conducted in a safe, orderly, and workmanlike manner.

(13) For the protection of streamcourses, the following measures shall be observed by operator: Culverts or bridges will be required on temporary roads at all points where it is necessary to cross streamcourses. Such facilities shall be of sufficient size and design to provide unobstructed flow of water. Equipment will not be operated in streamcourses except at designated crossings and as essential to construction or removal of culverts and bridges. Any stream that is temporarily diverted must be restored to the natural course as soon as practicable, and in any event prior to a major runoff season.

(14) Operator shall perform currently as weather and soil conditions permit, the following erosion control work on portions of the reserved area where logging is in progress or has been completed: Construct cross-ditches and water-spreading ditches where staked or otherwise marked on the ground by Forest Service; after a temporary road has served operator's purpose, operator shall remove culverts and bridges, eliminate ditches, out-slope and cross-drain roadbed and remove ruts and berms to the extent necessary to stabilize fills and other-

wise minimize erosion; operator shall avoid felling into, yarding in, or crossing natural meadows; and operations will not take place when soil and water conditions are such that excessive damage will result.

(b) The conditions, rules and regulations set forth in paragraphs (a)(1) through (14) of this section shall not apply to reservations contained in conveyances of land to the United States under the Act of March 3, 1925, as amended (43 Stat. 1133, 64 Stat. 82, 16 U.S.C. 555).

(c) In cases where a State, or an agency, or a political subdivision thereof, reserves timber rights for the cutting and removal of timber and timber products, in the conveyance of land to the United States under authorized programs of the Forest Service and there are provisions in the laws of such State or in conditions, rules and regulations promulgated by such State, agency or political subdivision thereof, which the Chief, Forest Service, determines are adequate to protect the interest of the United States in the event of the exercise of such reservation, the Chief, Forest Service, is hereby authorized, in his discretion, to subject the exercise of the reservation to such statutory provisions or such conditions, rules, and regulations in lieu of the the conditions, rules and regulations set forth in paragraphs (a) (1) through (14) of this section. In that event, such statutory provisions or such conditions, rules and regulations shall be expressed in and made a part of the deed of conveyance to the United States and the reservation shall be exercised thereunder and in obedience thereto.

All regulations heretofore issued by the Secretary of Agriculture to govern the exercise of timber rights reserved in conveyance of lands to the United States under authorized programs of Forest Service shall continue to be effective in the cases to which they are applicable, but are hereby superseded as to timber rights hereafter reserved in conveyances under such programs.

[35 FR 5401, Apr. 1, 1970]

§ 251.15 Conditions, rules and regulations to govern exercise of mineral rights reserved in conveyances to the United States.

(a) Except as otherwise provided in paragraphs (b) and (c) of this section, in conveyances of lands to the United States under authorized programs of the Forest Service, where owners reserve the right to enter upon the conveyed lands and to prospect for, mine and remove minerals, oil, gas, or other inorganic substances, said reservations shall be subject to the following conditions, rules and regulations which shall be expressed in and made a part of the deed of conveyance to the United States and such reservations shall be exercised thereunder and in obedience thereto:

(1) Whoever undertakes to exercise the reserved rights shall give prior written notice to the Forest Service and shall submit satisfactory evidence of authority to exercise such rights. Only so much of the surface of the lands shall be occupied, used, or disturbed as is necessary in bona fide prospecting for, drilling, mining (including the milling or concentration of ores), and removal of the reserved minerals, oil, gas, or other inorganic substances.

(2)(i) None of the lands in which minerals are reserved shall be so used, occupied, or disturbed as to preclude their full use for authorized programs of the Forest Service until the record owner of the reserved rights, or the successors, assigns, or lessees thereof, shall have applied for and received a permit authorizing such use, occupancy, or disturbance of those specifically described parts of the lands as may reasonably be necessary to exercise of the reserved rights.

(ii) Said permit shall be issued upon agreement as to conditions necessary to protect the interest of the United States including such conditions deemed necessary to provide for the safety of the public and other users of the land, and upon initial payment of the annual fee, which shall be at the rate of $2 per acre or fraction of acre included in the permit.

(iii) The permit shall also provide that the record owner of the reserved right or the successors, assigns, or lessees thereof, will repair or replace any improvements damaged or destroyed by the mining operations and restore the land to a condition safe and reasonably serviceable for authorized programs of the Forest Service, and shall provide for a bond in sufficient amount as determined necessary by the Forest Service to guarantee such repair, replacement or restoration.

(iv) Failure to comply with the terms and conditions of the aforesaid permit shall be cause for termination of all rights to use, occupy, or disturb the surface of the lands covered thereby, but in event of such termination a new permit shall be issued upon application when the causes for termination of the preceding permit have been satisfactorily remedied and the United States reimbursed for any resultant damage to it.

(3) All structures, other improvements, and materials shall be removed from the lands within one year after date of termination of the aforementioned permit. Should the holder of the permit fail to do so within the specified time, the Forest Service may remove, destroy or otherwise dispose of said structures, other improvements, and materials at the permittee's expense, or in lieu thereof, may upon written notice to the permittee, assume title thereto in the name of the United States.

(4) Timber and/or young growth cut or destroyed in connection with exercise of the reserved right shall be paid for at rates determined by the Forest Service to be fair and equitable for comparable timber and/or young growth in the locality. All slash resulting from cutting or destruction of timber or young growth shall be disposed of as required by the Forest Service.

(5) In the prospecting for, mining, and removal of reserved minerals, oil, gas, or other inorganic substances all reasonable provisions shall be made for the disposal of tailings, dumpage, and other deleterious materials or substances in such manner as to prevent obstruction, pollution, or deterioration of water resources.

(6) Nothing herein contained shall be construed to exempt operators or the mining operations from any requirements of applicable State laws nor from compliance with or conformity to any requirement of any law which later may be enacted and which otherwise would be applicable.

(7) While any activities and/or operations incident to the exercise of the reserved rights are in progress, the operators, contractors, subcontractors, and any employees thereof shall use due diligence in the prevention and suppression of fires, and shall comply with all rules and regulations applicable to the land.

(b) The conditions, rules and regulations set forth in paragraphs (a) (1) through (7) of this section shall not apply to reservations contained in conveyances of lands to the United States under the Act of March 3, 1925, as amended (43 Stat. 1133, 64 Stat. 82; 16 U.S.C. 555).

(c) In cases where a State, or an agency, or a political subdivision thereof, reserves minerals, oil, gas, or other inorganic substances, in the conveyance of land to the United States under authorized programs of the Forest Service and there are provisions in the laws of such State or in conditions, rules and regulations promulgated by such State, agency or political subdivision thereof, which the Chief, Forest Service, determines are adequate to protect the interest of the United States in the event of the exercise of such reservation, the Chief, Forest Service, is hereby authorized, in his discretion, to subject the exercise of the reservation to such statuatory provisions or such conditions, rules and regulations in lieu of the conditions, rules and regulations set forth in paragraphs (a) (1) through (7) of this section. In that event, such statuatory provisions or such conditions, rules and regulations shall be expressed in and made a part of the deed of conveyance to the United States and the reservation shall be exercised thereunder and in obedience thereto.

All regulations heretofore issued by the Secretary of Agriculture to govern the exercise of mineral rights reserved in conveyances of lands to the United States under authorized programs of the Forest Service shall continue to be effective in the cases to which they are applicable, but are hereby superseded as to mineral rights hereafter reserved in conveyances under such programs.

[28 FR 4440, May 3, 1963]

Rights of Grantors

§ 251.17 Grantor's right to occupy and use lands conveyed to the United States.

Except as otherwise provided in paragraph (h) of this section, in conveyances of lands to the United States under authorized programs of the Forest Service, where owners reserve the right to occupy and use the land for the purposes of residence, agriculture, industry, or commerce, said reservations shall be subject to the following conditions, rules and regulations which shall be expressed in and made a part of the deed of conveyance to the United States and such reservations shall be exercised thereunder and in obedience thereto:

(a) Except when provided otherwise by statute, the reservation so created shall not be assigned, used, or occupied by anyone other than the grantor without the consent of the United States.

(b) All reasonable precautions shall be taken by the grantor and all persons acting for or claiming under him to prevent and suppress forest fires upon or threatening the premises or other adjacent lands of the United States, and any person failing to comply with this requirement shall be responsible for any damages sustained by the United States by reason thereof.

(c) The premises shall not be used or permitted to be used, without the written consent of the United States, for any purpose or purposes other than those specified in the instrument creating the reservation.

(d) The grantor and all persons acting for or claiming under him shall maintain the premises and all buildings and structures thereon in proper repair and sanitation and shall comply with the National Forest laws and regulations and the laws and lawful orders of the State in which the premises are located.

(e) Except when provided otherwise by statute, the reservation shall terminate: (1) Upon the expiration of the period named in the deed; (2) upon failure for a period of more than one calendar year to use and occupy the premises for the purposes named in the deed; (3) by use and occupancy for unlawful purposes or for purposes other than those specified in the deed; and (4) by voluntary written relinquishment by the owner.

(f) Upon the termination of the reservation the owners of personal property remaining on the premises shall remove same within a period of three months, and all such property not so removed shall become the property of the United States except that when such removal is prevented by conditions beyond the control of the owners the period shall be extended in writing by the Forest Service to allow a reasonable time for said removal, but in no event longer than one year.

(g) The said reservation shall be subject to rights-of-way for the use of the United States or its permittees, upon, across, or through the said land, as may hereafter be required for the erection, construction, maintenance and operation of public utility systems over all or parts thereof, or for the construction and maintenance of any improvements necessary for the good administration and protection of the National Forests, and shall be subject to the right of officials or employees of the Forest Service to inspect the premises, or any part thereof, at all reasonable times and as often as deemed necessary in the performance of official duties in respect to the premises.

(h) The conditions, rules, and regulations set forth in paragraphs (a) through (g) of this section shall not apply to reservations contained in conveyances of lands to the United States under the Act of March 3, 1925, as amended (43 Stat. 1133, 64 Stat. 82; 16 U.S.C. 555).

[33 FR 11452, Aug. 13, 1968, as amended at 36 FR 156, Jan. 6, 1971]

§ 251.18 Rights-of-way reserved by the grantor on lands conveyed to the United States.

This section governs the use, occupancy, and operation of rights-of-way reserved by a grantor of lands to the United States.

(a) Brush and refuse resulting from the exercise of the right-of-way reservation shall be disposed of to the satisfaction of the Forest Officer in charge.

(b) Timber cut and destroyed in the exercise of the right-of-way reservation shall be paid for at rates to be prescribed by the Forest Officer in charge, which rates shall be the usual stumpage prices charged in the locality in sales of national forest timber of the same kind or species; for injury to timber, second growth, and reproduction, the amount of actual damage shall be ascertained by the Forest Supervisor according to the rules applicable in such cases.

(c) All improvements built or maintained upon the right-of-way shall be kept in an orderly, safe and sanitary condition. Failure to maintain such conditions shall be cause for the termination of the reservation after 30 days' notice in writing to the occupant or user that unsatisfactory conditions exist and that the Department intends to terminate all rights under the reservation unless such conditions are forthwith corrected to the satisfaction of the Regional Forester.

(d) Upon the abandonment of a reserved right-of-way, either by formal release, by termination, or by non-use for a period of one calendar year, all improvements thereon not the property of the United States shall be removed therefrom within three months from the date of the abandonment, otherwise such improvements shall vest in and become the property of the United States.

(e) All reasonable precautions to prevent and suppress forest fires shall be taken by the grantor and all persons acting for or claiming under him; suitable crossings shall be constructed by grantor and/or said persons where the reserved right-of-way intersects existing roads and trails; borrow pits shall not be opened outside of the immediate graded section except under a special use permit from the Forest Supervisor.

(f) Officers of the Forest Service shall have free ingress and egress on and over the reserved rights-of-way for all purposes necessary and incidental to the protection and administration of the national forest.

[3 FR 1953, Aug. 9, 1938]

§ 251.19 Exercise of water rights reserved by the grantor of lands conveyed to the United States.

This section governs the exercise of water and related rights reserved by the grantor of lands conveyed to the United States under the provisions of the act of March 1, 1911 (36 Stat. 961).

(a) All reasonable precautions shall be taken by the grantor and all persons acting for or claiming under him to prevent and suppress forest fires upon or threatening the premises or other adjacent lands of the United States, and any person failing to comply with this requirement shall be responsible for any damages sustained by the United States by reason thereof.

(b) All slash and debris resulting from the cutting and removal of timber shall be disposed of as directed by the Forest Officer in charge.

(c) Flowage and reservoir areas shall be cleared of timber and debris, in a manner satisfactory to the Forest Supervisor, or in accordance with a special agreement approved by him. Timber cut and destroyed in the exercise of the reserved rights shall be paid for at rates to be prescribed by the Forest Officer in charge, which rates shall be the usual stumpage price charged in the locality.

(d) The water surface created shall be open to the Forest Service and its permittees when such use does not interfere with the original purpose of the development.

(e) The water surface shall be open to fishing by the public in accordance with State laws when such use does not interfere with the original purpose of the development.

(f) Plans for dams and supplemental structures, impounding or controlling more than 10 acre-feet of water or with a head in excess of 6 feet, shall be approved by the Regional Engineer of the Forest Service before construction shall begin.

[3 FR 1953, Aug. 9, 1938]

DESIGNATION OF AREAS

§ 251.23 Experimental areas and research natural areas.

The Chief of the Forest Service shall establish and permanently record a series of areas on National Forest land to be known as experimental forests or experimental ranges, sufficient in number and size to provide adequately for the research necessary to serve as a basis for the management of forest and range land in each forest region. Also, when appropriate, the Chief shall establish a series of research natural areas, sufficient in number and size to illustrate adequately or typify for research or educational purposes, the important forest and range types in each forest region, as well as other plant communities that have special or unique characteristics of scientific interest and importance. Research Natural Areas will be retained in a virgin or unmodified condition except where measures are required to maintain a plant community which the area is intended to represent. Within areas designated by this regulation, occupancy under a special-use permit shall not be allowed, nor the construction of permanent improvements permitted except improvements required in connection with their experimental use, unless authorized by the Chief of the Forest Service.

[31 FR 5072, Mar. 29, 1966]

PETERSBURG WATERSHED

§ 251.35 Petersburg watershed.

(a) Except as authorized in paragraphs (b) and (c), access to lands within the Petersburg watershed, Tongass National Forest, as described in the Act of October 17, 1940 (54 Stat. 1197), is prohibited.

(b) Access to lands within the Petersburg watershed is hereby authorized, without further written approval, for the following routine purposes:

(1) The discharge of official duties related to management of the Tongass National Forest by Federal employees, holders of Forest Service contracts, or Forest Service agents;

(2) The operation, maintenance, and improvement of the municipal water system by Federal and State officials and employees of the city of Petersburg; and

(3) Public recreational use of the Raven's Roost Trail for access to and from the Raven's Roost public recreation cabin and the Alpine Recreation Area.

(c) Any person who wishes to enter upon the lands within the watershed for purposes other than those listed in paragraph (b) must obtain a permit that has been signed by the appropriate city official and countersigned by the District Ranger.

(d) Unauthorized entrance upon lands within the watershed is subject to punishment as provided in 36 CFR 261.1b.

(e) The Forest Supervisor of the Stikine Area of the Tongass National Forest may authorize the removal of timber from the watershed under the regulations governing disposal of National Forest timber (36 CFR Part 223). In any removal of timber from the watershed, the Forest Supervisor shall provide adequate safeguards for the protection of the Petersburg municipal water supply.

[53 FR 26595, July 14, 1988]

Subpart B—Special Uses

AUTHORITY: 16 U.S.C. 472, 497b, 551, 1134, 3210; 30 U.S.C. 185; 43 U.S.C. 1740, 1761-1771.

SOURCE: Sections 251.50—251.64 appear at 45 FR 38327, June 6, 1980, unless otherwise noted.

§ 251.50 Special uses.

(a) All uses of National Forest System land, improvements, and resources, except those provided for in the regulations governing the disposal of timber (Part 223) and minerals (Part 228) and the grazing of livestock (Part 222), are designated "special uses" and must be approved by an authorized officer.

(b) Nothing in this section prohibits the temporary occupancy of National

Forest System land for the protection of life or property in emergencies, if a special use authorization for such use is obtained at the earliest opportunity.

(c) A special use authorization is not required for the noncommercial use or occupancy of National Forest System lands or facilities for camping, picnicking, hiking, fishing, hunting, horse riding, boating, or similar recreational activity, unless one or more of the following circumstances exists:

(1) Authorization of such use is required by an order issued pursuant to 36 CFR 261.50;

(2) Authorization of such use is required by a regulation issued pursuant to 36 CFR 261.70;

(3) The use is for a group event as defined in § 251.51 of this subpart.

(d) Unless otherwise required by order issued under § 261.50 or by regulation issued under § 261.70 of this chapter, the use of existing forest development roads and trails does not require a special-use authorization; however, any such use is subject to compliance with all Federal and State laws governing the roads or trails to be used.

[45 FR 38327, June 6, 1980, as amended at 49 FR 25449, June 21, 1984; 53 FR 16549, May 10, 1988]

§ 251.51 Definitions.

"*Applicant*"—any individual, partnership, corporation, association, or other business entity, and any Federal, State or governmental entity or agency which applies for a special use authorization.

"*Authorized officer*"—any employee of the Forest Service to whom has been delegated the authority to perform the duties described in this part.

"*Chief*"—the Chief of the Forest Service.

"*Distributing noncommercial printed material*"—disseminating, posting, placing, or erecting any notice, sign, handbill, petition, or other written and/or graphic material for noncommercial purposes.

"*Easement*"—a special use authorization for a right-of-way that conveys a conditioned interest in National Forest System land, and is compensable according to its terms.

"*Group event*"—an organized or publicized activity involving, or expected to attract, 25 or more persons and the use of National Forest System lands, resources, or facilities.

"*Holder*"—any applicant who has received a special use authorization.

"*Lease*"—a special use authorization which conveys a right of occupancy and use of National Forest System land or facility for a specified period and purpose, and is both revocable and compensable according to its terms.

"*National Forest System land*"—all lands, waters, or interests therein administered by the Forest Service.

"*Noncommercial printed material*"—written and/or graphic material that does not advertise, offer, or otherwise attempt to buy, sell, or exchange a commodity, product, or service.

"*Permit*"—a special use authorization which provides permission, without conveying an interest in land, to occupy and use National Forest System land or facilities for specified purposes, and which is both revocable and terminable.

"*Right-of-way*"—land authorized to be used or occupied for the construction, operation, maintenance and termination of a project or facility passing over, upon, under or through such land.

"*Secretary*"—the Secretary of Agriculture.

"**Ski area**"—a site and attendant facilities expressly developed to accommodate alpine or nordic skiing and from which the preponderance of revenue is generated by the sale of lift tickets and fees for ski rentals, for skiing instruction and trail passes for the use of permittee-maintained ski trails. A ski area may also include ancillary facilities directly related to the operation and support of skiing activities.

"*Special use authorization*"—a permit, term permit, lease, or easement which allows occupancy, use, rights, or privileges of National Forest System land.

"*Term permit*"—a special use authorization to occupy and use National Forest System land, other than rights-of-way under § 251.53(l) of this part, for a specified period which is both revocable and compensable according to its terms.

[45 FR 38327, June 6, 1980, as amended at 49 FR 25449, June 21, 1984; 53 FR 16550, May 10, 1988; 54 FR 22593, May 25, 1989]

§ 251.52 Delegation of authority.

Special use authorizations shall be issued, granted, amended, renewed, suspended, terminated, or revoked by the Chief, or through delegation, by the Regional Forester, Forest Supervisor, District Ranger or other forest officer, and shall be in such form and contain such terms, stipulations, conditions, and agreements as may be required by the regulations of the Secretary and the instructions of the Chief (7 CFR 2.60; 36 CFR Part 200, Subpart B).

§ 251.53 Authorities.

Subject to any limitations contained in applicable statutes, the Chief of the Forest Service, or other Agency official to whom such authority is delegated, may issue special use authorizations for National Forest System land under the authorities cited and for the types of use specified in this section as follows:

(a) Permits governing occupancy and use, including group events and distribution of noncommercial printed materials, under the act of June 4, 1897, 30 Stat. 35 (16 U.S.C. 551);

(b) Leases under the Act of February 28, 1899, 30 Stat. 908 (16 U.S.C. 495) for public sanitariums or hotels near or adjacent to mineral springs;

(c) Permits under the Act of June 8, 1906, 34 Stat. 225 (16 U.S.C. 431, et seq.), for the examination of ruins, the excavation of archaeological sites, and the gathering of objects of antiquity in conformity with the rules and regulations prescribed by the Secretaries of the Interior, Agriculture, and War, December 28, 1906 (43 CFR Part 3);

(d) Term permits under the Act of March 4, 1915, 38 Stat. 1101, as amended, 70 Stat. 708 (16 U.S.C. 497) for periods not over 30 years and (1) for not over 80 acres for (i) hotels, resorts, and other structures and facilities for recreation, public convenience, or safety; (ii) industrial or commercial purposes, and (iii) education or public activities; and (2) for not over 5 acres for summer homes and stores;

(e) Easements for rights-of-way for pipeline purposes for the transportation of oil and gas and products thereof where no Federal land other than National Forest System land is required, and permits for the temporary use of additional National Forest System land necessary for construction, operation, maintenance or termination of a pipeline or to protect the natural environment or the public safety under section 28 of the Mineral Leasing Act of 1920, 41 Stat. 449, as amended, (30 U.S.C. 185);

(f) Permits, term permits, and easements in the National Grasslands and other lands acquired or administered under Title III, Act of July 22, 1937, 50 Stat. 525, as amended, (7 U.S.C. 1011(d));

(g) Permits under section 7 of the Act of April 24, 1950, 64 Stat. 84 (16 U.S.C. 580d) for periods not over 30 years for the use of structures or improvements under the administrative control of the Forest Service and land used in connection therewith;

(h) Permits, term permits, leases, or easements as authorized by the Act of September 3, 1954, 68 Stat. 1146 (43 U.S.C. 931c, 931d), to States, counties, cities, towns, townships, municipal corporations, or other public agencies for periods not over 30 years, at prices representing the fair market value, fixed by the Chief, through appraisal for the purpose of constructing and maintaining on such lands public buildings or other public works;

(i) Permits under the Wilderness Act of September 3, 1964, 78 Stat. 890 (16 U.S.C. 1131-36) for temporary structures and commercial services and for access to valid mining claims or other valid occupancies and to surrounded State or private land within designated wilderness (see § 293 of this chapter);

(j) Temporary or permanent easements under the Act of October 13, 1964, 78 Stat. 1089 (16 U.S.C. 532-538) for road rights-of-way over lands and interests in land administered by the Forest Service (see § 212.10 of this chapter);

(k) Permits under the Land and Water Conservation Fund Act of September 3, 1964, 78 Stat. 897, as amended (16 U.S.C. 4601-6a(c)), for recreation events and other specialized recreation uses;

(l) Permits, leases and easements under the Federal Land Policy and Management Act of 1976, 90 Stat. 2776 (43 U.S.C. 1761-71) for rights-of-way for:

(1) Reservoirs, canals, ditches, flumes, laterals, pipes, pipelines, tunnels, and other facilities and systems for the impoundment, storage, transportation, or distribution of water;

(2) Pipelines and other systems for the transportation or distribution of liquids and gases, other than water and other than oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom, and for storage and terminal facilities in connection therewith;

(3) Pipelines, slurry and emulsion systems, and conveyor belts for transportation and distribution of solid materials, and facilities for the storage of such materials in connection therewith;

(4) Systems and related facilities for generation, transmission, and distribution of electric energy, except that the applicant, in addition to obtaining a Forest Service special use authorization, shall also comply with all applicable requirements of the Federal Energy Regulatory Commission under the Federal Power Act of 1935, as amended, 49 Stat. 838 (16 U.S.C. 791a, et seq.);

(5) Systems for transmission or reception of radio, television, telephone, telegraph, and other electronic signals and other means of communication;

(6) Roads, trails, highways, railroads, canals, tunnels, tramways, airways, livestock driveways, or other means of transportation except where such facilities are constructed and maintained in connection with commercial recreation facilities;

(7) Such other necessary transportation or other systems or facilities which are in the public interest and which require rights-of-way over, upon, under, or through National Forest System lands; and

(8) Any Federal department or agency for pipeline purposes for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any product produced therefrom;

(m) Permits under the Archaeological Resources Protection Act of 1979, 93 Stat. 721 (16 U.S.C. 470aa).

(n) Operation of nordic and alpine ski areas and facilities for up to 40 years and encompassing such acreage as the Forest Officer determines sufficient and appropriate as authorized by the National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b).

[45 FR 38327, June 6, 1980; 15 FR 43167, June 26, 1980, as amended at 49 FR 25449, June 21, 1984; 53 FR 16550, May 10, 1988; 54 FR 22594, May 25, 1989]

§ 251.54 Special use applications.

(a) *Preapplication activity.* When occupancy and/or use of National Forest System land is desired, a proponent is encouraged to contact the Forest Service office(s) responsible for management of the affected land as early as possible so potential constraints may be identified, the proposal can be considered in land management plans, and processing of an application can be tentatively scheduled. The proponent will be given guidance and information about: (1) Possible land use conflicts as identified by review of land management plans, landownership records, and other readily available information sources; (2) application procedures and probable time requirements; (3) applicant qualifications; (4) fees, charges, bonding and security requirements; (5) necessary associated clearances, permits, and licenses; (6) environmental and management considerations; (7) special conditions; and (8) identification of on-the-ground investigations which will require temporary use permits. If requested by the proponent, the Forest Service officer will, to the extent reasonable and authorized by law, not disclose project and program information revealed during preapplication contacts.

(b) *Filing applications.* Applications for special uses will be filed with the District Ranger or Forest Supervisor having jurisdiction over the affected land (§ 200.2 of this chapter) except:

(1) Applications for projects on lands under the jurisdiction of two or more

administrative units of the Forest Service may be filed at the most convenient Forest Service office having jurisdiction over part of the project and the applicant will be notified where subsequent communications should be directed;

(2) Applications for cost-share and other road easements to be issued under § 251.53(j) will be filed in accordance with regulations in § 212.10 (c) and (d) of this chapter; and

(3) Applications for oil and gas pipeline rights-of-way crossing Federal lands under the jurisdiction of two or more Federal agencies shall be filed with the State Office, Bureau of Land Management, pursuant to regulations in 43 CFR 2882.

(c) *Coordination of applications.* Authorizations for use of National Forest System land may be conditioned to require State, county, or other Federal agency license, permit, certificate or other approval document, such as Federal Communication Commission license, Federal Energy Regulatory Commission license, State water right, or county building permit. Applicants filing applications with such agencies for a project, will simultaneously file an application with the Forest Service under this section. To minimize duplication, pertinent information from the application made to the other agency can be attached and referred to in the Forest Service application.

(d) *Rights of applicants.* No rights or use privileges are conveyed without a special use authorization.

(e) *Application content.* As a minimum, applications shall include the information contained in paragraphs (e)(1) through (5) of this section.

(1) *Applicant identification.* Identification of the applicant shall be sufficient that the Government will know the true identity of the entity and/or individuals applying. The authorized officer shall give due deference to the findings of another agency such as a public utility commission, the Federal Energy Regulatory Commission, or the Interstate Commerce Commission, in lieu of another detailed finding. If this information is already on file with the Forest Service, it need not be refiled if reference is made to the previous filing date, place and case number. The applicant's name and address is required and, if the applicant is not an individual, the name and address of the applicant's agent who is authorized to receive notice of actions pertaining to the application. If called for by the authorized officer, an applicant in one of the following categories shall also furnish the additional information listed:

(i) A State and local government agency: a copy of the authorization under which the application is made;

(ii) A public corporation: the statute or other authority under which it was organized;

(iii) A Federal government agency: the title of the agency official delegated the authority to file the application;

(iv) A private corporation: (A) Evidence of incorporation and its current good standing; (B) if reasonably obtainable by the applicant, the name and address of each shareholder owning 3 percent or more of the shares, together with the number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote; (C) the name and address of each affiliate of the entity; (D) in the case of an affiliate which is controlled by the entity, the number of shares and the percentage of any class of voting stock of the affiliate that the entity owns either directly or indirectly; or (E) in the case of an affiliate which controls that entity, the number of shares and the percentage of any class of voting stock of that entity owned, either directly or indirectly, by the affiliate; or

(v) A partnership, association or other unincorporated entity: a certified copy of the partnership agreement or other similar document, if any, creating the entity, or a certificate of good standing under the laws of the State.

(2) *Technical and financial capability.* Sufficient evidence will be required to satisfy the authorized officer that the applicant has, or prior to commencement of construction will have, the technical and financial capability to construct, operate, maintain, and terminate the project for which

authorization is requested, and is otherwise acceptable.

(3) *Project description.* A project description, including map(s), shall be required in sufficient detail to enable the authorized officer to determine: the feasibility of the project or activity proposed, its impacts on the environment, any benefits provided to the public, the safety of the proposal, the lands to be occupied or used, the terms and conditions to be included, and whether the proposal will comply with applicable laws, regulations and orders.

(4) *Environmental protection plan.* The applicant's proposed measures and plans for the protection and rehabilitation of the environment during construction, operation, maintenance, and termination of the project shall be required.

(5) *Additional information.* The authorized officer may require any other information and data necessary to determine feasibility of the project or activity proposed; impacts on the environment; compliance with applicable laws, regulations, and orders; compliance with requirements for associated clearances, certificates, permits, or licenses; and suitable terms and conditions to be included in the authorization. Requests for additional information if needed will be in writing.

(f) *Processing applications.* The authorized officer will acknowledge receipt of the application in writing.

(1) The authorized officer will assess the applicant's qualifications; complete an environmental analysis, assessment and/or an environmental impact statement under the National Environmental Policy Act of 1969; determine compliance with other applicable laws, regulations and orders; consult with other agencies, local officials, or interested parties and hold public meetings upon reasonable notice when sufficient interest exists to warrant the time and expense; and take any other action necessary to fully evaluate and make a decision to approve or deny the application and to prescribe suitable terms and conditions.

(2) Federal, State, and local government agencies and the public will be given adequate notice and an opportunity to comment upon special use proposals in accordance with Forest Service practices established under the National Environmental Policy Act, and/or other pertinent direction.

(g) *Special application procedures.* (1) Oil and gas pipeline rights-of-way. These will include the citizenship of the applicant(s) and disclose the identity of its participants as follows:

(i) Citizens of another country, the laws, customs, or regulations of which deny similar or like privileges to citizens or corporations of the United States, shall not own an appreciable interest in any oil and gas pipeline right-of-way or associated permit; and

(ii) The authorized officer shall notify the House Committee on Interior and Insular Affairs and the Senate Committee on Energy and Natural Resources promptly upon receipt of an application for a right-of-way for a pipeline twenty-four (24) inches or more in diameter, and no right-of-way for such a pipeline shall be granted until sixty (60) days (not counting days on which the House of Representatives or the Senate has adjourned for more than three (3) days) after a notice of intention to grant the right-of-way, together with the authorized officer's detailed findings as to terms and conditions he proposes to impose, has been submitted to such committees, unless each committee by resolution waives the waiting period.

(2) *Electric power transmission lines 66 KV or over.* Each application for authority to construct and maintain a facility for the generation of electric power and energy or for the transmission or distribution of electric power and energy of 66 kilovolts or higher under this section shall be referred to the Secretary of Energy for consultation.

(h) *Response to applications for the distribution of noncommercial printed material or for a group event for the public expression of views.* An authorized officer shall grant an application for authorization of distribution of noncommercial printed material or for a group event for the purposes of public expression of views, unless the officer determines that:

(1) The planned event or use would conflict with another use which has

been previously approved by special use authorization, contract, or approved operating plan, under this part or Parts 222, 223, or 228 of this chapter; or

(2) The planned event or use would present a clear and present danger to public health or safety; or,

(3) The planned event or use would be of such nature and duration that it could not reasonably be accommodated in the particular place and time applied for, considering such factors as damage to resources or facilities, interference with ongoing resource program activities, or impairment of other public uses authorized for the area; or

(4) The application proposes activities that are prohibited by the rules at Part 261 of this chapter or that violate the provisions of Federal or State criminal law.

(5) There is no person or entity authorized to sign a special use authorization on behalf of the group applying for an authorization and/or there is not person or entity willing to accept responsibility for the group's adherence to the terms and conditions of the permit.

(i) *Response to applications for all other special uses.* An authorized officer may deny issuance of an authorization for all other special uses, including group events not subject to paragraph (h) of this section, if that officer determines that:

(1) The proposed use would be inconsistent or incompatible with the purpose(s) for which the lands are managed, or with other uses; or

(2) The proposed use would not be in the public interest; or

(3) The applicant is not qualified; or

(4) The use would otherwise be inconsistent with applicable Federal and State laws; or

(5) The applicant does not or cannot demonstrate technical or financial capacity.

(6) There is no person or entity authorized to sign a special use authorization on behalf of the group applying for an authorization and/or there is no person or entity willing to accept responsibility for the group's adherence to the terms and conditions of the permit.

When an application is denied on the basis of paragraph (i)(1) or (i)(3) of this section, the authorized officer shall provide the applicant the opportunity to accept an alternative site or time selected by that officer.

[45 FR 38327, June 6, 1980; 45 FR 43167, June 26, 1980, as amended at 48 FR 29122, June 24, 1983; 49 FR 46895, Nov. 29, 1984; 53 FR 16550, May 10, 1988]

§ 251.55 Nature of interest.

(a) A holder is authorized only to occupy such land and structures and conduct such activities as is specified in the special use authorization. The holder may sublet the use and occupancy of the premises and improvements authorized only with the prior written approval of the authorized officer, but the holder shall continue to be responsible for compliance with all conditions of the special use authorization.

(b) All rights not expressly granted are retained by the United States, including but not limited to (1) continuing rights of access to all National Forest System land (including the subsurface and air space); (2) a continuing right of physical entry to any part of the authorized facilities for inspection, monitoring, or for any other purposes or reason consistent with any right or obligation of the United States under any law or regulation; and (3) the right to require common use of the land or to authorize the use by others in any way not inconsistent with a holder's existing rights and privileges after consultation with all parties and agencies involved. When costs can be feasibly allocated and have not been amortized, a new holder may be required to compensate existing holders for an equitable proportion of the original costs or other expense associated with the common use.

(c) Special use authorizations are subject to all outstanding valid rights.

(d) Each special use authorization will specify the lands to be used or occupied which shall be limited to that which the authorized officer determines: (1) Will be occupied by the facilities authorized; (2) to be necessary for the construction, operation, maintenance, and full utilization of the authorized facilities or the conduct of authorized activities; and, (3) to be necessary to protect the public health and safety and the environment.

(e) The holder will secure permission under applicable law, and pay in advance, the value as determined by the authorized officer for any mineral and vegetative materials (including timber) to be cut, removed, used, or destroyed by the holder from the authorized use area or other National Forest System land. The authorized officer may, in lieu of requiring an advance payment, require the holder to stockpile or stack the material at designated locations for later disposal by the United States.

§ 251.56 Terms and conditions.

(a) *General.* Each special use authorization shall contain: (1) Terms and conditions which will (i) carry out the purposes of applicable statutes and rules and regulations issued thereunder; (ii) minimize damage to scenic and esthetic values and fish and wildlife habitat and othewise protect the environment; (iii) require compliance with applicable air and water quality standards established by or pursuant to applicable Federal or state law; and (iv) require compliance with State standards for public health and safety, environmental protection, and siting, construction, operation, and maintenance if those standards are more stringent than applicable Federal standards; and (2) such terms and conditions as the authorized officer deems necessary to (i) protect Federal property and economic interests; (ii) manage efficiently the lands subject to the use or adjacent thereto; (iii) protect other lawful users of the lands adjacent to or occupied by such use; (iv) protect lives and property; (v) protect the interests of individuals living in the general area of the use who rely on the fish, wildlife, and other biotic resources of the area for subsistence purposes; (vi) require siting to cause least damage to the environment, taking into consideration feasibility and other relevant factors; and (vii) otherwise protect the public interest.

(b) *Duration and renewability*—(1) *Requirements.* If appropriate, each special use authorization will specify its duration and renewability. The duration shall be no longer than the authorized officer determines to be necessary to accomplish the purpose of the authorization and to be reasonable in light of all circumstances concerning the use, including (i) resource management direction contained in land management and other plans; (ii) public benefits provided; (iii) cost and life expectancy of the authorized facilities; (iv) financial arrangements for the project; and (v) the life expectancy of associated facilities, licenses, etc. Except for special use authorizations issued under the National Forest Ski Area Permit Act of 1986, authorizations exceeding 30 years shall provide for revision of terms and conditions at specified intervals to reflect changing times and conditions.

(2) *Ski area permits.* (i) For authorizations issued under the National Forest Ski Area Permit Act of 1986, the authorized officer normally shall issue a ski area authorization for 40 years, if, upon consideration of information submitted by the applicant, the authorized officer finds that the ski area development meets the following standards:

(A) In the case of an existing permit holder, existing on-site investment is of sufficient magnitude to justify authorization for 40 years;

(B) In the case of an existing permit holder, existing investment of capital is in ski-related facilities;

(C) Planned investment capital is directly related to development of ski area facilities and is not for financing regular, ongoing operation and maintenance costs;

(D) Ski facilities requiring long-term investment are, or will be, located predominately on land authorized under a permit;

(E) The number and magnitude of planned facilities, as detailed in a Master Development Plan, clearly require long-term financing and/or operation;

(F) The United States is not the owner of the principal facilities within the authorized ski area.

(ii) A term of less than 40 years shall be authorized for a ski area when the applicant requests a shorter term or when, in the authorized officer's discretion:

(A) Analysis of the information submitted by the applicant indicates that a shorter term is sufficient for financing of the ski area;

(B) The ski area development, whether existing or proposed, does not meet the standards of paragraph 2(i)(A)-(F) of this section; or

(C) A 40-year authorization would be inconsistent with the approved forest land and resource management plan governing the area (36 CFR Part 219).

(c) *Preconstruction approvals.* Forest Service approval of location, design and plans (or standards, if appropriate) of all developments within the authorized area will be required prior to construction.

(d) *Liability.* Holders shall pay the United States for all injury, loss, or damage, including fire suppression costs, in accordance with existing Federal and State laws.

(1) Holders shall also indemnify the United States for any and all injury, loss, or damage, including fire suppression costs, the United States may suffer as a result of claims, demands, losses, or judgments caused by the holder's use or occupancy.

(2) Holders of rights-of-way for high risk use and occupancy, such as, but not limited, to powerlines, and oil and gas pipelines, shall be held liable for all injury, loss, or damage, including fire suppression costs, caused by the holder's use or occupancy without regard to the holder's negligence, provided that the maximum liability shall be specified in the special use authorization, but shall not exceed $1,000,000 for any one occurrence. Liability for injury, loss or damage, including fire suppression costs, in excess of the specified maximum shall be determined by the laws governing ordinary negligence of the jurisdiction in which the damage or injury occurred.

(e) *Bonding.* The authorized officer may require the holder of a special use authorization to furnish a bond or other security to secure all or any of the obligations imposed by the terms of the authorization or by any applicable law, regulation, or order.

(f) *Special terms and conditions*—(1) *Public service enterprises.* Special use permits authorizing the operation of public service enterprises shall require that the permittee charge reasonable rates and furnish such services as may be necessary in the public interest, except where such rates and services are regulated by Federal, State or municipal agencies having jurisdiction.

(2) *Common carriers.* Oil and gas pipelines and related facilities authorized under section 28 of the Mineral Leasing Act of 1920, 41 Stat. 449, as amended (30 U.S.C. 185), shall be constructed, operated and maintained as common carriers. The owners or operators of pipelines shall accept, convey, transport, or purchase without discrimination all oil or gas delivered to the pipeline without regard to whether such oil or gas was produced on Federal or nonfederal lands. In the case of oil or gas produced from Federal lands or from the resources on the Federal lands in the vicinity of the pipeline, the Secretary may, after a full hearing with due notice thereof to interested parties and a proper finding of facts, determine the proportionate amounts to be accepted, conveyed, transported, or purchased. The common carrier provisions of this section shall not apply to any natural gas pipeline operated (i) by any person subject to regulation under the Natural Gas Act, 52 Stat. 821, as amended, (15 U.S.C. 717) or (ii) by any public utility subject to regulation by a State or municipal regulatory agency having jurisdiction to regulate the rates and charges for the sale of natural gas to consumers within the State or municipality. Where natural gas not subject to State regulatory or conservation laws governing its purchase by pipeline companies is offered for sale, each pipeline company shall purchase, without discrimination, any such natural gas produced in the vicinity of the pipeline.

(g) *Conversion of Ski Area Authorizations.* (1) The Forest Service shall request that all existing permit holders convert existing authorizations for ski areas to a new authorization issued pursuant to the National Forest Ski Area Permit Act.

(2) Any current holder of a ski area permit who wishes to convert an existing permit to one issued pursuant to the National Forest Ski Area Permit

Act must submit a written request for the new authorization to the authorized officer.

(3) With the consent of the holder, the authorized officer shall convert the authorization if:

(i) The holder is in compliance with the existing authorization;

(ii) All fees currently due under the existing authorization are paid in full; and

(iii) Any proposed modifications of terms and conditions of the existing authorization included in a request for conversion meet the standards of paragraphs (2)(i) (A) through (F) of this section and the relevant requirements of this subpart.

(4) A holder retains the right to decline a new authorization offered pursuant to this paragraph and to continue to operate under the terms of the existing permit. However, pursuant to the rules at § 251.61 of this subpart, major modifications of existing permits shall require conversion to a permit issued under the authority of the National Forest Ski Area Permit Act, unless the holder provides compelling justification for retaining the existing permit.

[45 FR 38327, June 6, 1980, as amended at 49 FR 46895, Nov. 29, 1984; 54 FR 22594, May 25, 1989]

§ 251.57 Rental fees.

(a) Special use authorizations, except as otherwise provided in this part or when specifically authorized by the Secretary of Agriculture, shall require the payment in advance of an annual rental fee as determined by the authorized officer. The fee will be based upon the fair market value of the rights and privileges authorized as determined by appraisal or other sound business management principles. When the annual fee is less than $100, an advance lump-sum payment for up to five years may be required.

(b) All or part of the fee may be waived by the authorized officer, when equitable and in the public interest, for the use and occupancy of National Forest System land in the following circumstances:

(1) The holder is a State or local government or any agency or instrumentality thereof, excluding municipal utilities and cooperatives whose principal source of revenue from the authorized use is customer charges; or

(2) The holder is a nonprofit association or nonprofit corporation, which is not controlled or owned by profit-making corporations or business enterprises, and which is engaged in public or semi-public activity to further public health, safety, or welfare, except that free use will not be authorized when funds derived by the holder through the authorization are used to increase the value of the authorized improvements owned by the holder, or are used to support other activities of the holder; or

(3) The holder provides without charge, or at reduced charge, a valuable benefit to the public or to the programs of the Secretary; or

(4) When the rental fee is included in the fees for an authorized use or occupancy for which the United States is already receiving compensation; or

(5) When a right-of-way is authorized in reciprocation for a right-of-way conveyed to the United States; or

(6) For rights-of-way involving cost-share roads or reciprocal right-of-way agreements.

(c) No rental fee will be charged when the holder is the Federal government.

(d) Special use authorizations issued under § 251.53(g) of this part may require as all or a part of the consideration the reconditioning and maintenance of the government-owned or controlled structures, improvements, and land to a satisfactory standard. The total consideration will be based upon the fair market value of the rights and privileges authorized.

(e) Special use authorizations involving government-owned or controlled buildings, structures, or other improvements which require caretakers' services, or the furnishing of special services such as water, electric lights, and clean-up, may require the payment of an additional fee or charge to cover the cost of such services.

(f) Except where specified otherwise by terms of a special use authorization, rental fees may be initiated or adjusted whenever necessary: (1) As a result of fee review, reappraisal; or (2) upon a change in the holder's qualifications under paragraph (b) of this section; and (3) notice is given prior to initiating or adjusting rental fees.

(g) In addition to the fee waiver provisions of paragraph (b) of this section, the Forest Supervisor of the Mark Twain National Forest may, until December 31, 1990, waive rental fees for special use permits when all of the following conditions are met:

(1) The rental fee established for the use reflects the current market value for the use;

(2) The cost of collecting the rental fee would exceed either the amount of the rental fee itself, or the amount of any advance lump sum payment of the rental fee as specified in paragraph (a) of this section, and

(3) The Forest Supervisor has exhausted all other reasonable alternatives, such as consolidated billing or similar cost saving measures.

(h) Each ski area authorization issued under the authority of the National Forest Ski Area Permit Act shall include a clause that provides that the Forest Service may adjust and calculate future rental fees to reflect Agency revisions to the existing system for determining fees based on fair market value or to comply with any new fee system for determining fees based on fair market value that may be adopted after issuance of the authorization.

[45 FR 38327, June 6, 1980, as amended at 51 FR 16683, May 6, 1986; 54 FR 22594, May 25, 1989]

§ 251.58 Cost reimbursement. [Reserved]

§ 251.59 Transfer of special use privileges.

Except for easements issued under authorities other than § 251.53 (e) and (l) of this part, a special use authorization may be transferred upon application and the approval of the authorized officer. The transferee must qualify and agree to comply with and be bound by the terms and conditions of the authorization and such new conditions and stipulations as existing or prospective circumstances may warrant. If the holder, through death, voluntary sale, transfer, or through enforcement of a valid legal proceeding or operation of law, shall cease to be the owner of the authorized physical improvements, the authorization shall be subject to termination.

§ 251.60 Termination, revocation, and suspension.

(a) The authorized officer may suspend, revoke, or terminate any special use authorization except an easement issued pursuant to § 251.53 (e) and (l): (1) For noncompliance with applicable statutes, regulations, or terms and conditions of the authorization; (2) for failure of the holder to exercise the rights and privileges granted; (3) with the consent of the holder; or (4) when, by its terms, a fixed or agreed upon condition, event, or time occurs.

(b) A permit may be suspended, revoked, or terminated, in the discretion of the authorized officer, for reasons in the public interest.

(c) A right-of-way authorization granted to another Federal agency will be limited, suspended, revoked, or terminated only with that agency's concurrence.

(d) A right-of-way authorization serving another Federal agency will be limited, suspended, revoked, or terminated only after advance notice to, and consultation with, that agency.

(e) Prior to suspension, revocation, or termination, the authorized officer shall give the holder written notice of the grounds for such action and reasonable time to cure any noncompliance.

(f) Immediate temporary suspension of a special use authorization, in whole or in part, may be required when the authorized officer determines it to be necessary to protect the public health or safety or the environment. In any such case, the superior of the authorized officer will, within 10 days of request of the holder, arrange for an on-the-ground review of the adverse conditions with the holder. Following this review the superior will take action to affirm, modify or cancel the temporary suspension as soon as possible.

(g) Except for suspension or termination of easements issued pursuant to § 251.53 (e) and (l) of this part all appeals from any decision of an authorized officer under this section shall be taken under 36 CFR Part 211, Subpart B of this chapter.

(h) The authorized officer may take actions to suspend, revoke, or terminate easements issued pursuant to § 251.53 (e) and (l) of this part under the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary under 7 CFR 1.130 through 1.151. No administrative proceeding shall be required if the easement, by its terms, provides that it terminates on the occurrence of a fixed or agreed-upon condition, event, or time.

(i) The Chief may terminate any easement granted under the provisions of the Act of October 13, 1964, 78 Stat. 1089 (16 U.S.C. 534): (1) By consent of the owner of the easement, (2) by condemnation, or (3) upon abandonment after nonuse by the owner of the easement for a period of 5 years. Before any easement is terminated for nonuse or abandonment, the owner of the easement must be given notice and, upon his request made within 60 days after receipt of the notice, a hearing in accordance with the provisions of 36 CFR Part 211, Subpart B of this chapter.

(j) Upon termination of a special use authorization, the holder shall remove within a reasonable time the structures and improvements and shall restore the site to a condition satisfactory to the authorized officer, unless otherwise waived in writing or in the authorization. If the holder fails to remove the structures or improvements within a reasonable period, as determined by the authorized officer, they shall become the property of the United States, but that will not relieve the holder's liability for the removal and site restoration costs.

[45 FR 38327, June 6, 1980; 45 FR 43167, June 26, 1980, as amended at 48 FR 28639, June 23, 1983]

§ 251.61 Modifications.

(a) A holder shall file a new or amended application for a special use authorization to cover new, changed, or additional use(s) or area.

(1) In approving or denying changes or modifications, the authorized officer shall consider among other things, the findings or recommendations of other involved agencies and whether the terms and conditions of the existing authorization may be continued or revised, or a new authorization issued.

(2) Changes during construction, or at any other time, from the approved plans or the location shown in the application or authorization shall be allowed only with the prior approval of the authorized officer.

(b) A holder may be required to furnish as-built plans, map(s), or survey(s) upon completion of construction.

(c) A holder shall obtain approval of the authorized officer prior to maintenance or other activities that will impact the environment, other users, or the public.

§ 251.62 Acceptance.

Except for an easement, a special use authorization shall become effective when signed by both the applicant and the authorized officer. The authorization must be signed by the applicant and returned to the authorized officer within 60 days of its receipt by the applicant, unless extended by the authorized officer. Refusal of an applicant to sign and accept a special use authorization within the time allowed, and before its final approval and signature by an authorized officer, shall terminate an application and constitute denial of the requested use and occupancy.

[53 FR 16550, May 10, 1988]

§ 251.63 Reciprocity.

If it is determined that a right-of-way shall be needed by the United States across nonfederal lands directly or indirectly owned or controlled by an applicant for a right-of-way across Federal lands, the authorized officer may condition a special use authorization to require the holder to grant the United States the needed right-of-way.

§ 251.64 Renewals.

(a) When a special use authorization provides for renewal, the authorized officer shall renew it where such renewal is authorized by law, if the project or facility is still being used for the purpose(s) previously authorized and is being operated and maintained in accordance with all the provisions of the authorization. In making such renewal, the authorized officer may modify the terms, conditions, and special stipulations to reflect any new requirements imposed by current Federal and State land use plans, laws, regulations or other management decisions.

(b) When a special use authorization does not provide for renewal, it is discretionary with the authorized officer, upon request from the holder and prior to its expiration, whether or not the authorization shall be renewed. A renewal pursuant to this section shall comply with the same provisions contained in paragraph (a) of this section.

§ 251.65 Information collection requirements.

(a) The rules of this subpart governing special use applications (§ 251.54) and modifications of special use authorizations (§ 251.61) specify the information that applicants for special use authorizations or holders of existing authorizations must provide in order for a Forest officer to act on a request. As such, these rules contain information requirements as defined in 5 CFR Part 1320. These information requirements are assigned control number 0596-0082.

(b) Public reporting burdens for this collection of information is estimated to vary from a 30 minutes in very simple cases to several months for extremely complex requests for authorizations, with an average of 4 hours per response. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief (2700) Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

[54 FR 6893, Feb. 15, 1989]

Subpart C—Appeal of Decisions Relating to Occupancy and Use of National Forest System Lands

AUTHORITY: 16 U.S.C. 472, 551.

SOURCE: 54 FR 3362, Jan. 23, 1989, unless otherwise noted.

§ 251.80 Purpose and scope.

(a) This subpart provides a process by which those who hold or, in certain instances, those who apply for written authorizations to occupy and use National Forest System lands, may appeal a written decision by an authorized Forest Service line officer with regard to issuance, approval, or administration of the written instrument. The rules in the subpart establish who may appeal under these rules, the kinds of decisions that can and cannot be appealed, the responsibilities of parties to the appeal, and the various procedures and timeframes that will govern the conduct of appeals under this subpart.

(b) The rules in this subpart seek to offer appellants a fair and deliberate process for appealing and obtaining administrative review of decisions regarding written instruments that authorize the occupancy and use of National Forest System lands.

§ 251.81 Definitions and terminology.

For the purposes of this subpart, the following terms are defined:

Appeal. A request to a higher ranking officer for relief from a written decision filed under this subpart by an applicant for or a holder of a written instrument issued or approved by a Forest Service line officer.

Appeal decision. The written decision rendered by the Reviewing Officer on an appeal for relief under this subpart. The use of this term is limited to the final decision of a Reviewing Officer and does not refer to a stay decision or to any other determinations or procedural orders made on the conduct of an appeal (§ 251.99).

Appeal record. The documents submitted to the Reviewing Officer by an appellant, intervenor, or Deciding Officer (§ 251.98).

Appellant. An eligible applicant for or holder of a written instrument issued for the occupancy and use of National Forest System land (or their authorized agent or representative) who files an appeal pursuant to the provisions of this subpart (§ 251.86).

Deciding officer. The Forest Service line officer who makes a decision related to issuance, approval, or administration of an authorization to occupancy and use National Forest System lands that is appealed under this subpart.

Decisions regarding a written instrument or authorization to occupy and use National Forest System lands. A broad, all inclusive phrase used throughout this subpart to connote the full range of actions and decisions a forest officer takes to issue written instruments, or to manage authorized uses of National Forest System lands, including, but not limited to, enforcement of terms and conditions, and suspension, cancellation, and/or termination of an authorization.

Forest Service line officer. The Chief of the Forest Service or a Forest Service official who serves in a direct line of command from the Chief and who has the delegated authority to make and execute decisions under this subpart. Specifically, for the purposes of this subpart, a Forest Service employee who holds one of the following offices and titles: District Ranger, Forest Supervisor, Deputy Forest Supervisor, Regional Forester, Deputy Regional Forester, Deputy Chief, Associate Deputy Chief, Associate Chief, or the Chief of the Forest Service.

Intervenor. An individual who, or organization that, is an applicant for or holder of the written instrument, or a similar instrument, issued by the Forest Service that is the subject of an appeal, and who has an interest that could be affected by an appeal, and who has made a timely request to intervene in that appeal, and who has been granted intervenor status by the Reviewing Officer (§ 251.96).

Issuance of a written instrument of authorization. Applies both to decisions to grant and to deny a written instrument or authorization.

Notice of appeal. The document prepared and filed by an appellant to dispute a decision subject to review under this subpart (§ 251.90).

Oral presentation. An informal meeting (in person or by telephone) at which an appellant, intervenor, and/or Deciding Officer may present information related to an appeal to the Reviewing Officer (§ 251.97).

Parties to an appeal The appellant(s), intervenor(s), and the Deciding Officer.

Responsive statement. A written document prepared by a Deciding Officer that responds to the notice of appeal record by an appellant (§ 251.94).

Reviewing Officer. The officer at the next administrative level above that of the Deciding Officer who conducts appeal proceedings, makes all necessary rulings regarding conduct of an appeal, and issues the appeal decision.

Written instrument or authorization. Any of those kinds of documents listed in § 251.82 of this subpart issued or approved by the Forest Service authorizing an individual, organization or other entity to occupy and use National Forest System lands and resources.

[54 FR 3362, Jan. 23, 1989; 54 FR 13807, Apr. 5, 1989]

§ 251.82 Appealable decisions.

(a) The rules of this subpart govern appeal of written decisions of Forest Service line officers related to issuance, denial, or administration of the following written instruments to occupy and use National Forest System lands, including but not limited to:

(1) Permits for ingress and egress to intermingled and adjacent private lands across National Forest System lands, 36 CFR 212.8 and 212.10.

(2) Permits and occupancy agreements on National Grasslands and other lands administered under the provisions of Title III of Bankhead-Jones Farm Tenant Act issued under 36 CFR 213.3.

(3) Grazing and livestock use permits issued under 36 CFR part 222, subpart A.

(4) Mining plans of operation under 36 CFR part 228, subpart A.

(5) Mining operating plans for the Sawtooth National Recreation Area issued under 36 CFR 292.17 and 292.18.

(6) Permits and agreements regarding mineral materials (petrified wood and common varieties of sand, gravel, stone, pumice, pumicite, cinder, clay and other similar materials) under 36 CFR 228, subpart C.

(7) Permits authorizing exercise of mineral rights reserved in conveyance to the United States issued under 36 CFR part 251, subpart A.

(8) Special use authorizations issued under 36 CFR part 251, subpart B, except, as provided in § 251.60(g), for suspension or termination of easements issued pursuant to 36 CFR 251.53(e) and (e)(1).

(9) Permits for uses in Wilderness Areas issued under 36 CFR 293.3.

(10) Permits to excavate and/or remove archaeological resources issued under the Archaeological Resources Protection Act 1979 and 36 CFR part 296.

(11) Approval/non-approval of Surface Use Plans of Operations related to the authorized use and occupancy of a particular site or area.

(12) Decisions related to the standards for the use, subdivision, and development of privately owned property within the boundaries of the Sawtooth National Recreation Area pursuant to 36 CFR part 292, subpart C.

(b) Written decisions on any of the matters of the type listed in paragraph (a) of this section issued by a Forest Service staff officer with delegated authority to act for a Forest Service line officer are considered to be decisions of the line officer.

[54 FR 3362, Jan. 23, 1989, as amended at 54 FR 34510, Aug. 21, 1989]

§ 251.83 Decisions not appealable.

The following decisions are not appealable under this subpart:

(a) Decisions appealable to the Agriculture Board of Contract Appeals, USDA, under 7 CFR part 24.

(b) Decisions involving Freedom of Information Act denials under 7 CFR part 1 or Privacy Act determinations under 7 CFR 1.118.

(c) Decisions for which the jurisdiction of another Government agency, the Comptroller General, or a court to hear and settle disputes supersedes that of the Department of Agriculture.

(d) Recommendations of Forest Service line officers to higher ranking Forest Service line officers or to other entities having final authority to implement the recommendation in question.

(e) Decisions appealable under separate administrative proceedings, including, but not limited to, those under 36 CFR 223.117 (Administration of Cooperative for Federal Sustained Yield Units); 7 CFR 21.104 (Eligibility for Recreation Payment of Amount); and 4 CFR part 21 (Bid Protests).

(f) Decisions pursuant to Office of Management and Budget Circular A-76, Performance of Commercial Activities.

(g) Decisions concerning contracts under the Federal Property and Administrative Services Act of 1949, as amended.

(h) Decisions covered by the Contract Disputes Act.

(i) Decisions involving Agency personnel matters.

(j) Decisions where relief sought is reformation of a contract or award of monetary damages.

(k) Decisions made during the preliminary planning process pursuant to 36 CFR part 219 and 40 CFR parts 1500-1508 that precede decisions to implement the proposed action.

(l) Decisions related to National Forest land and resource management plans and projects only reviewable under 36 CFR part 217.

(m) Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena such as wildfires, severe wind, earthquakes, and flooding when the Regional Forester or, in situations of national significance, the Chief of the Forest Service determines and gives notice that good cause exists to exempt such decisions from appeal under this subpart.

(n) Decisions imposing penalties for archaeological violations under 36 CFR 296.15 or for violations of prohibitions and orders under 36 CFR part 261.

(o) Reaffirmation of prior decisions.

[54 FR 3362, Jan. 23, 1989, as amended at 54 FR 34510, Aug. 21, 1989]

§ 251.84 Obtaining notice.

A Deciding Officer shall promptly give written notice of decisions subject to appeal under this subpart to applicants and holders defined in § 251.86 of this subpart and to any holder of like instruments who has made a written request to be notified of a specific decision. The notice shall include a statement of the Deciding Officer's willingness to meet with applicants or holders to hear and discuss any concerns or issues related to the decision (§ 251.93). The notice shall also specify the name of the officer to whom an appeal of the decision may be filed, the address, and the deadline for filing an appeal.

§ 251.85 Election of appeal process.

(a) No decision can be appealed by the same person under both this subpart and part 217 of this chapter.

(b) Should a decision be reviewable under this subpart as well as part 217 of this chapter, a party who qualifies to bring an appeal under this subpart can elect which process to use for obtaining review of a decision, but in so doing, the appellant thereby forfeits all right to appeal the same decision under the other review process. However, a holder who waives the right to appeal under the provisions of 36 CFR part 217 may intervene pursuant to 36 CFR 217.6(b).

§ 251.86 Parties.

Only the following may participate in the appeals process provided under this subpart:

(a) An applicant who, in response to a prospectus or written solicitation or other notice by the Forest Service, files a formal written request for a written authorization to occupy and use National Forest System land covered under § 251.82 of this subpart and

(1) Was denied the authorization, or

(2) Was offered an authorization subject to terms and conditions that the applicant finds unreasonable or impracticable.

(b) The signatory(ies) or holder(s) of a written authorization to occupy and use National Forest System land covered under § 251.82 of this subpart who seeks relief from a written decision related to that authorization.

(c) An intervenor as defined in § 251.81 of this subpart.

(d) The Deciding Officer who made the decision being appealed under this subpart.

§ 251.87 Levels of appeal.

(a) *Decisions made by the Chief.* If the Chief of the Forest Service is the Deciding Officer, the appeal is to the Secretary of Agriculture. Review by the Secretary is discretionary. Within 15 calendar days of receipt of a timely notice of appeal, the Secretary shall determine whether or not to review the decision. If the Secretary has not decided to review the Chief's decision by the expiration of the 15-day period, the requester(s) shall be notified by the Secretary's office that the Chief's decision is the final administrative decision of the Department of Agriculture. When the Secretary elects to review an initial decision made by the Chief, the Secretary shall conduct the review in accordance with the first level appeal procedures outlined in this rule.

(b) *Decisions made By Forest Supervisors and Regional Foresters.* Only one level of appeal is available on written decisions by Forest Service line officers below the level of the Chief and above the level of the District Ranger. The levels of available appeal are as follows:

(1) If the decision is made by a Forest Supervisor, the appeal is filed with the Regional Forester;

(2) If the decision is made by a Regional Forester, the appeal is filed with the Chief of the Forest Service.

(c) *Decisions made by the District Ranger.* Two levels of appeal are available for written decisions by District Rangers.

(1) The appeal for initial review is filed with the Forest Supervisor.

(2) The appeal for a second level of review is filed with the Regional Forester within 15 days of the first level appeal decision. Upon receiving such a request, the Regional Forester shall promptly request the first level file from the Forest Supervisor. The review shall be conducted on the existing record and no additional information shall be added to the file.

(d) *Discretionary review of dismissal decisions.* Dismissal decisions rendered by Forest Service line officers pursuant to this part (§ 251.92) are subject to only one level of discretionary review (§ 251.100) as follows:

(1) If the Reviewing Officer was the Forest Supervisor, the Regional Forester has discretion to review.

(2) If the Reviewing Officer was the Regional Forester, the Chief has discretion to review.

(3) If the Reviewing Officer was the Chief, the Secretary of Agriculture has discretion to review.

(e) *Discretionary review of appeal decisions.* Appeal decisions rendered by Regional Foresters and the Chief pursuant to this part are subject to only one level of discretionary review as follows:

(1) If the Reviewing Officer is the Regional Forester, the Chief of the Forest Service has discretion to review.

(2) If the Reviewing Officer is Chief, the Secretary of Agriculture has discretion to review.

(3) A Regional Forester's decision on a second-level appeal constitutes the final administrative determination of the Department of Agriculture on the appeal and is not subject to further review by a higher level officer under this subpart.

[54 FR 3362, Jan. 23, 1989, as amended at 54 FR 34510, Aug. 21, 1989]

§ 251.88 Filing procedures.

(a) *Filing procedures.* In order to appeal a decision under this subpart, an appellant must:

(1) File a notice of appeal in accordance with § 251.90 of this subpart with the next higher line officer as identified in § 251.87.

(2) File the notice of appeal within 45 days of the date on the notice of the written decision being appealed (§ 251.84); and

(3) Simultaneously send a copy of the notice of appeal to the Deciding Officer.

(b) *Evidence of timely filing.* It is the responsibility of those filing an appeal to file the notice of appeal by the end of the filing period. In the event of questions, legible postmarks will be considered evidence of timely filing. Where postmarks are illegible, the Reviewing Officer shall rule on the timeliness of the notice of appeal. Untimely submissions are subject to dismissal as provided for in § 251.92(2).

(c) *Computation of time period for filing.* (1) The time period for filing a notice of appeal of a decision under this subpart begins on the first day after the Deciding Officer's written notice of the decision. All other time periods applicable to this subpart also will be computed to begin on the first day following an event or action related to the appeal.

(2) Time periods applicable to this subpart are computed using calendar days. Saturdays, Sundays, or Federal holidays are included in computing the time allowed for filing an appeal; however, when the filing period would expire on a Saturday, Sunday, or Federal holiday the filing time is extended to the end of the next Federal working day.

§ 251.89 Time extensions.

(a) *Filing of notice of appeal.* Time for filing a notice of appeal is not extendable.

(b) *All other time periods.* Appellants, Intervenors, Deciding Officers, and Reviewing Officers shall meet the time periods specified in the rules of this subpart, unless a Reviewing Officer has extended the time as provided in this paragraph. Except as noted in paragraph (a) of this section and as prohibited at the discretionary review level (§ 251.100), the Reviewing Officer may extend all other time periods under this subpart.

(1) For appeals of initial written decisions by the Chief, a Regional Forester, or a Forest Supervisor, a Reviewing Officer, where good cause exists, may grant a written request for extension of time to file a responsive statement or replies thereto. The Reviewing Officer shall rule on requests for extensions within 10 days of receipt of the request and shall provide written notice of the extension ruling to all parties to the appeal.

(2) Except for discretionary reviews of appeal decisions as provided in § 251.100 of this subpart, a Reviewing Officer may extend the time period

for issuance of the appeal decision, including for purposes of allowing additional time for the Deciding Officer to resolve disputed issues, as provided in § 251.93 of this subpart.

[54 FR 3362, Jan. 23, 1989, as amended at 54 FR 34510, Aug. 21, 1989]

§ 251.90 Content of notice of appeal.

(a) It is the responsibility of an appellant to provide a Reviewing Officer sufficient narrative evidence and argument to show why a decision by a lower level officer should be reversed or changed.

(b) An appellant must include the following information in a notice of appeal:

(1) The appellant's name, mailing address, and daytime telephone number;

(2) The title or type of written instrument involved, the date of application for or issuance of the written instrument, and the name of the responsible Forest Service Officer;

(3) A brief description and the date of the written decision being appealed;

(4) A statement of how the appellant is adversely affected by the decision being appealed;

(5) A statement of the facts of the dispute and the issue(s) raised by the appeal;

(6) Specific references to any law, regulation, or policy that the appellant believes to be violated and the reason for such an allegation.

(7) A statement as to whether and how the appellant has tried to resolve the issue(s) being appealed with the Deciding Officer, the date of any discussion, and the outcome of that meeting or contact; and

(8) A statement of the relief the appellant seeks.

(c) An appellant may also include in the notice of appeal a request for oral presentation (§ 251.97) or a request for stay of implementation of the decision pending on the appeal (§ 251.93).

[54 FR 3362, Jan. 23, 1989; 54 FR 13807, Apr. 5, 1989, as amended at 54 FR 34510, Aug. 21, 1989]

§ 251.91 Stays.

(a) A decision may be implemented during an appeal unless the Reviewing Officer grants a stay.

(b) An appellant or intervenor may request a stay of a decision at any time while an appeal is pending, if the harmful effects alleged pursuant to paragraph (c)(3) of this section would occur during pendency of the appeal. The Reviewing Officer shall not accept any request to stay implementation of a decision that is not scheduled to begin during pendency of the appeal.

(c) To request a stay of decision, an appellant or intervenor must—

(1) File a written request with the Reviewing Officer;

(2) Simultaneously send a copy of the stay request to any other appellant(s), to intervenor(s), and to the Deciding Officer.

(3) Provide a written justification of the need for a stay, which at a minimum includes the following:

(i) A description of the specific project(s), activity(ies), or action(s) to be stopped.

(ii) Specific reasons why the stay should be granted in sufficient detail to permit the Reviewing Officer to evaluate and rule upon the stay request, including at a minimum:

(A) The specific adverse effect(s) upon the requester;

(B) Harmful site-specific impacts or effects on resources in the area affected by the activity(ies) to be stopped, and

(C) How the cited effects and impacts would prevent a meaningful decision on the merits.

(d) A Deciding Officer and other parties to an appeal may provide the Reviewing Officer with a written response to a stay request. A copy of any response must be sent to all parties to the appeal.

(e) *Timeframe.* The Reviewing Officer must rule on a stay request no later than 10 calendar days from receipt.

(f) *Criteria to consider.* In deciding a stay request, a Reviewing Officer shall consider:

(1) Information provided by the requester pursuant to paragraph (c) of this section including the validity of any claim of adverse effect on the requester;

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(2) The effect that granting a stay would have on preserving a meaningful appeal on the merits;

(3) Any information provided by the Deciding Officer or other party to the appeal in response to the stay request; and

(4) Any other factors the Reviewing Officer considers relevant to the decision.

(g) *Notice of decision on a stay request.* A Reviewing Officer must issue a written decision on a stay request.

(1) If a stay is granted, the stay shall specify the specific activities to be stopped, duration of the stay, and reasons for granting the stay.

(2) If a stay is denied in whole or in part, the decision shall specify the reasons for the denial.

(3) A copy of a decision on a stay request shall be sent to all parties to the appeal.

(h) *Duration.* A stay shall remain in effect for the 15-day period for determining discretionary review (§ 251.100), unless changed by the Reviewing Officer in accordance with paragraph (i) of this section.

(i) *Change in a stay.* A Reviewing Officer may change a stay decision in accordance with any terms established in the stay decision itself or at any time during pendency of an appeal that circumstances support a change of stay. In making any changes to a stay decision, the Reviewing Officer must issue a written notice to all parties to the appeal explaining the reason for making the changes and setting forth any terms or conditions that apply to the change.

(j) *Petitions to change a stay.* An appellant or intervenor may petition a Reviewing Officer to change or lift a stay at any time during the pendency of an appeal. Such petitions must be in writing, must explain how circumstances have changed since the stay was imposed, and must state why the change in the stay is being requested. The petitioner must send a copy of the petition to all parties to the appeal.

(k) *Appeal of stay decision or changes in stay.* A Reviewing Officer's decision to grant, deny, lift, or otherwise change a stay is not subject to further appeal and review, except when the first-level Reviewing Officer was the Forest Supervisor. In this instance, the Regional Forester has discretion to review.

[54 FR 3362, Jan. 23, 1989, as amended at 54 FR 34510, Aug. 21, 1989]

§ 251.92 Dismissal.

(a) The Reviewing Officer shall dismiss an appeal and close the record without a decision on the merits when:

(1) The appellant is not eligible to appeal a decision under this subpart.

(2) Appellant's notice of appeal is not filed within the required time period, or the notice of appeal fails to meet the minimum requirements of § 251.90 of this subpart to such an extent that the Reviewing Officer lacks adequate information on which to base a decision.

(3) In cases where there is only one appellant, the appellant withdraws the appeal.

(4) The requested relief cannot be granted under existing law, fact, or regulation.

(5) The decision is excluded from appeal under this subpart (§ 251.83).

(6) The Deciding Officer has withdrawn the decision under appeal.

(7) A request for review of the same decision has been filed by the same person under part 217 of this Chapter.

(b) The Reviewing Officer shall give written notice of dismissal that includes an explanation of why the appeal is dismissed.

(c) A Reviewing Officer's dismissal decision is subject to discretionary review at the next administrative level as provided for in § 251.87(d) of this part, except when a dismissal decision results from withdrawal of an appeal by an appellant or withdrawal of the initial decision by the Deciding Officer.

[54 FR 3362, Jan. 23, 1989, as amended at 55 FR 7896, Mar. 6, 1990]

§ 251.93 Resolution of issues.

(a) Authorized Forest Service officers shall, to the extent practicable and consistent with the public interest, consult and meet in person, or by phone, with holders of written instruments prior to issuing written decisions related to administration of a written authorization. The purpose of such meetings is to discuss any issues or concerns related to the authorized use and to reach a common understanding and agreement where possible prior to issuance of a written decision.

(b) When decisions are appealed, the Deciding Officer may discuss the appeal with the appellant(s) and intervenor(s) together or separately to narrow issues, agree on facts, and explore opportunities to resolve the issues by means other than review and decision on the appeal. At the request of the Deciding Officer, the Reviewing Officer may extend the time periods for review, except at the discretionary level, and specify a reasonable duration to allow for conduct of meaningful negotiations.

(c) The Deciding Officer has the authority to withdraw a decision, in whole or in part, during the appeal. Where a Deciding Officer decides to withdraw a decision, all parties to the appeal and the Reviewing Officer must receive written notice.

[54 FR 3362, Jan. 23, 1989, as amended at 54 FR 34510, Aug. 21, 1989]

§ 251.94 Responsive statement.

(a) *Content.* A responsive statement contains the Deciding Officer's response to the specific facts or issues of law or regulation and the requested relief set forth by the appellant in the notice of appeal.

(b) *Timeframe.* Unless the Reviewing Officer has granted an extension or dismissed the appeal, the Deciding Officer shall prepare a responsive statement and send it to the Reviewing Officer and all parties to the appeal within 30 days of receipt of the notice of appeal.

(c) *Replies.* Within 20 days of the postmarked date of the responsive statement, the appellant(s) and any intervenor(s) may file a written reply to the responsive statement with the Reviewing Officer. Appellants and intervenors must send a copy of any reply to a responsive statement to all parties to the appeal, including the Deciding Officer.

§ 251.95 Authority of reviewing officer.

(a) *Discretion to establish procedures.* A Reviewing Officer may issue such procedural orders as deemed appropriate to ensure orderly, expeditious, and fair conduct of an appeal providing they are consistent with other provisions of this part.

(1) In appeals involving intervenors, the Reviewing Officer may prescribe special procedures to conduct the appeal.

(2) All parties to an appeal shall receive notice of any orders or decisions on the conduct of the appeal.

(3) Orders and determinations governing the conduct of an appeal are not subject to appeal and further review.

(b) *Consolidation of appeals.* A Reviewing Officer may consolidate multiple appeals of the same decision, or of similar decisions involving common issues of fact or law and issue one appeal decision. Similarly, a Reviewing Officer may issue one decision in cases involving separate reviews filed pursuant to 36 CFR part 217 and under this part when the decision at issue is the same decision. In such case, the Reviewing Officer shall give notice to all parties to multiple appeals.

(1) A decision to consolidate appeals is not subject to appeal and further review.

(2) At the discretion of the Reviewing Officer, the Deciding Officer may prepare one responsive statement to multiple appeals.

(c) *Requests for additional information.* Except in discretionary review conducted pursuant to § 251.100 and second level appeals of decisions made by the District Ranger pursuant to § 251.87(c) of this subpart, the Reviewing Officer may ask any party to an appeal for additional information as deemed necessary to decide the appeal. Such requests will be limited to obtaining and evaluating information needed to clarify issues raised. The Reviewing Officer shall notify all parties of the request for information, provide it to all parties, give opportunity to comment, and extend time periods if necessary to allow for submission of the information.

[54 FR 3362, Jan. 23, 1989, as amended at 54 FR 34510, Aug. 21, 1989; 55 FR 7896, Mar. 6, 1990]

§ 251.96 Intervention.

(a) A request to intervene in an appeal may be made at any time prior to the closing of the appeal record (§ 251.98) at the first level of appeal (§ 251.87). Requests to intervene in an appeal at the discretionary review level (§ 251.87(d)) shall be denied.

(b) To request intervention in a first-level appeal under this subpart, a party, at a minimum, must:

(1) Submit a written petition to intervene to the Reviewing Officer,

(2) Be, as defined at § 251.81 of this subpart, an applicant for or holder of a written instrument issued by the Forest Service that is the subject of or affected by the appeal, and have an interest that could be directly affected by a decision on the appeal, and

(3) Show, in the request for intervention, how the decision on the appeal would directly affect petitioner's interests.

(c) The Reviewing Officer determines whether a party requesting intervention meets the requirements of paragraph (a) of this section. In granting intervention, the Reviewing Officer must give notice to all other parties to the appeal.

(d) A granting or denial of intervention is not subject to appeal to a higher level.

(e) Appellants and intervenors must concurrently furnish copies of all submissions to each other as well as the Deciding Officer. Failure to provide each other copies may result in removal of a submission from the appeal record. At the discretion of the Reviewing Officer, appellants may be given additional time to review and comment on initial submissions by intervenors.

(f) An intervenor cannot continue an appeal if the appellant withdraws the appeal.

[54 FR 3362, Jan. 23, 1989, as amended at 54 FR 34510, Aug. 21, 1989]

§ 251.97 Oral presentation.

(a) *Purpose.* An oral presentation provides an additional opportunity for an appellant, and other parties to an appeal, to present their viewpoints to the Reviewing Officer. The purpose is to restate, emphasize, and/or clarify information related to an appeal. Oral presentations are to be conducted in an informal manner and shall not be subject to formal rules of procedure such as those applicable to judicial proceedings.

(b) *Requests.* Only an appellant may request and be granted an oral presentation. An appellant may request an oral presentation at any time prior to closing of the appeal record (§ 251.98). A Reviewing Officer shall automatically grant an oral presentation if the appellant requested the presentation as part of the notice of appeal.

(c) *Participation.* At the discretion of the Reviewing Officer, oral presentations may be open to public attendance, but participation is limited to parties to the appeal. The Reviewing Officer shall advise all parties to the appeal, including the Deciding Officer, of the place, time, and date of the oral presentation, and how the oral presentation will be conducted. All parties to an appeal shall be invited to participate. Appellants and intervenors must bear any expense involved in making an oral presentation in person or by telephone.

(d) *Limitation.* Oral presentations shall be held only at the first level of appeal (§ 251.87(b)).

§ 251.98 Appeal record.

The following rules apply only to the appeal record for appeals at the first level (§ 251.87 (a), (b)):

(a) It is the responsibility of the Reviewing Officer to maintain in one location the documents related to the appeal.

(b) The record consists of the documents filed with the Reviewing Officer including, but not limited to, the notice of appeal, responsive statement, replies to submissions by various parties to the appeal, orders and determinations made on the conduct of the appeal, and correspondence.

(c) The Reviewing Officer has discretion to remove from the record documents that were not sent to all parties to an appeal.

(d) Unless the Reviewing Officer has ordered otherwise, the appeal record closes with the expiration of the time period for filing of the reply(ies) to the responsive statement, or at the conclusion of an oral presentation, if there is one. The Reviewing Officer shall notify all parties to an appeal of the closure of the record.

(e) The appeal record is open to public inspection.

(f) In appeals involving initial decisions of the Chief (§ 251.87(a)), the establishment of an administrative record as defined in paragraph (a) of this section shall not begin unless the Secretary elects to review the appeal. Except for the initial notice of appeal, any filings made previous to the Secretary's election to review will not be accepted.

[54 FR 3362, Jan. 23, 1989, as amended at 54 FR 34510, Aug. 21, 1989]

§ 251.99 Appeal decision.

(a) The Reviewing Officer shall base the appeal decision on the appeal record and applicable laws, regulations, orders, policies, and procedures.

(b) The Reviewing Officer shall affirm or reverse the original decision whole or in part and include the reason(s) for the decision. The Reviewing Officer may also include in the appeal decision instructions for further action by the Deciding Officer.

(c) At the first level of appeal, the Reviewing Officer shall make and issue an appeal decision within 30 days of the date the record is closed.

(d) At the second level of appeal provided in § 251.87(c), the Reviewing Officer shall make and issue an appeal decision within 30 days of the date the record is received from the first level Reviewing Officer.

(e) The Reviewing Officer shall send a copy of all appeal decisions to all participants.

(f) Unless the next higher officer exercises the discretion to review an appeal decision as provided in §§ 251.87(e) and 251.100 of this subpart, the appeal decision is the final administrative decision of the Department of Agriculture and is not subject to further review under this subpart or part 217 of this chapter.

[54 FR 3362, Jan. 23, 1989, as amended at 54 FR 34510, Aug. 21, 1989]

§ 251.100 Discretionary review.

(a) Petitions or requests for discretionary review shall not, in and of themselves, give rise to a decision to exercise discretionary review. In electing to exercise discretion, a Reviewing Officer should consider, but is not limited to, such factors as controversy surrounding the decision, the potential for litigation, and whether the appeal decision is precedential in nature or establishes new policy.

(b) As provided for in §§ 251.87 (d) and (e), 251.91(k), and 251.92, stay decisions rendered by a Forest Supervisor, certain dismissal decisions rendered by Forest Service line officers, and first-level appeal decisions rendered by Regional Foresters and the Chief (§ 251.99), are subject to discretionary review at the next highest administrative level. Within one day following the date of a decision subject to such discretionary review, the Reviewing Officer shall forward a copy of the decision and the initial decision upon which the appeal is predicated to the next higher officer.

(c) The next higher level officer shall have 15 calendar days from date of receipt to decide whether or not to review an appeal decision and may call for or use the appeal record in deciding whether or not to review the appeal decision. If the record is requested, the 15-day period is suspended at that point. The lower level Reviewing Officer shall forward it within 5 days of the request. Upon receipt, the higher level officer shall have 15 days to decide whether or not to review the lower level decision. If that officer takes no action by the expiration of the discretionary review period, appellants shall be notified by the discretionary level officer that the appeal decision of the Reviewing Officer stands as the final administrative review decision of the Department of Agriculture.

(d) When an official exercises the discretion in § 251.87(d) or § 251.87(e) of this subpart to review a dismissal or appeal decision, the discretionary review shall be made on the existing appeal record and the lower level Reviewing Officer's appeal decision. The record shall not be reopened to accept additional submissions from any source, including the Reviewing Officer whose appeal decision is being reviewed.

(e) When an official exercises discretion to review an appeal decision, a Reviewing Officer may extend a stay, in whole or in part, during pendency of the discretionary review.

(f) The second level Reviewing Officer shall conclude the review within 30 days of the date of notice issued to an appellant that the lower level decision will be reviewed.

(g) If a discretionary review decision is not issued by the end of the 30-day review period, appellants and intervenors shall be deemed to have exhausted their administrative remedies for purposes of judicial review. In such case, appellants, intervenors, and the lower level Reviewing Officer shall be notified by the discretionary level officer.

(h) The Reviewing Officer shall provide a copy of the decision to all appellants, intervenors, the Deciding Officer, and the lower level Reviewing Officer.

[54 FR 3362, Jan. 23, 1989, as amended at 54 FR 34510, Aug. 21, 1989; 55 FR 7896, Mar. 6, 1990]

§ 251.101 Policy in event of judicial proceedings.

It is the position of the Department of Agriculture that any filing for Federal judicial review of and relief from a decision appealable under this subpart is premature and inappropriate, unless the appellant has first sought to resolve the dispute by invoking and exhausting the procedures of this subpart. This position may be waived only upon a written finding by the Chief.

§ 251.102 Applicability and effective date.

(a) Except where applicants or holders elect the decision review procedures of part 217 of this chapter, appealable decisions arising from the issuance, approval, and administration of written instruments authorizing occupancy and use of National Forest System lands made on or after February 22, 1989, shall be subject to the procedures of this part.

(b) Decisions made before February 22, 1989, arising from the issuance, approval, and administration of written instruments authorizing occupancy and use of National Forest System lands shall be subject to appeal under the provisions of 36 CFR 211.18.

[54 FR 6892, Feb. 15, 1989]

PART 254—LANDOWNERSHIP ADJUSTMENTS

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Subpart A—Land Exchanges

AUTHORITY: Act of Mar. 20, 1922, as amended (16 U.S.C. 485, 486); Act of Mar. 1, 1911, as amended (16 U.S.C. 516); Act of

July 22, 1937, as amended (7 U.S.C. 1011); Act of Oct. 23, 1962 (16 U.S.C. 555a); Act of Oct. 21, 1976 (43 U.S.C. 1715, 1716); and other applicable laws.

SOURCE: 43 FR 24830, June 8, 1978, unless otherwise noted.

§ 254.1 Scope and application.

(a) There are many laws that authorize the exchange of National Forest System real property to meet management objectives within the System. The particular law that may be used for an exchange depends on the status of the National Forest System property and the purpose for which the exchange is to be made.

(b) Land exchanges are discretionary, voluntary real estate transactions between the Secretary of Agriculture acting by and through the Forest Service and private owners, States, or other non-Federal entities. These transactions may involve the exchange of lands or interests therein. The Forest Service is not required to exchange any part of the National Forest System.

(c) These rules are applicable to all National Forest System exchanges, except exchanges under the authority of the Alaska Native Claims Settlement Act, as amended (89 Stat. 1156) and as otherwise noted. Each exchange authority has specific, as well as general, requirements which must be met.

(d) These rules are not applicable to mineral interests which have been retained by the United States in prior conveyances.

(e) There is no authority for the Forest Service to exchange lands that are withdrawn from the public domain for use by the Forest Service as administrative sites where the withdrawn lands are not a part of a National Forest.

§ 254.2 Definitions.

(a) National Forest System is defined in the Act of August 17, 1974 (88 Stat. 480, 16 U.S.C. 1609), as including all national forest lands reserved or withdrawn from the public domain of the United States, all national forest lands acquired through purchase, exchange, donation, or other means, the national grasslands and land utilization projects administered under Title III of the Bankhead-Jones Farm Tenant Act (50 Stat. 525, 7 U.S.C. 1010-1012), and other lands, waters, or interests therein which are administered by the Forest Service or are designated for administration through the Forest Service as a part of the System. The National Forest System will be referred to in these rules as NFS.

(b) Status is the condition of landownership within the NFS and is determined by the method that the land became part of the NFS.

(c) A reservation is a right created by the grantor in a clause in an instrument of conveyance by which the grantor reserves some right, interest, or profit in the estate granted.

(d) An outstanding interest is a right or interest in property owned by a person other than the present landowner.

(e) An interest is a partial or undivided right in real property that is less than the complete fee or estate.

(f) Lands means any land or interests therein.

§ 254.3 Requirements.

(a) There are general and specific requirements that must be met in effecting an exchange.

(1) *General requirements.* (i) Lands can only be exchanged to a person who is a citizen of the United States, a corporation that is subject to the laws of any State or the United States or to a non-Federal Governmental entity.

(ii) The exchange must be in the public interest. When considering public interests the Forest Service shall give full consideration to better Federal land management and the needs of State and local people, including needs for lands for the economy, community expansion, recreation areas, food, fiber, minerals, and fish and wildlife. There must be a finding that the exchange will not result in a decrease in public values or the ability to meet NFS management objectives.

(iii) An exchange of lands must be equal in fair market value. A payment of money not to exceed 25 percent of the market value of the NFS lands may be paid by either party to equalize the transaction. The parties will try to minimize the amount of cash equalization. The amount of the payment is not limited in exchanges pursuant to the Exchange for Schools Act of December 14, 1967 (81 Stat. 531). Differences in the size of the exchange properties will not disqualify the exchange if the value requirements are met and the proposal is in the public interest.

(iv) The Forest Service will exchange only lands that are suitable for elimination from the NFS and will reserve rights or retain the interests that are needed for the public interest.

(v) The lands conveyed to the United States cannot be encumbered by reservations or outstanding interests that would unduly interfere with their use and management as part of the NFS.

(vi) Reservations by the non-Federal owner must be subject to the appropriate rules and regulations of the Secretary of Agriculture for such reserved rights, except upon special finding by the Chief, Forest Service in case of States. (36 CFR 251.15 to 251.19.)

(2) *Specific requirements.* (i) The exchange must accomplish the specific requirements and objectives contained in each exchange act. The status of the NFS lands determines the exchange act that may be used except in special cases.

(ii) Most of the exchange laws require that the exchange lands be in the same State. Major exceptions are Title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1011); the Act of August 3, 1956 (7 U.S.C. 428a(a)) and the Act of October 23, 1962 (16 U.S.C. 555a).

(iii) Exchanges under the authority of the Act of March 1, 1911, as amended (16 U.S.C. 516) must be submitted to the Secretary of Agriculture for approval. The Secretary must submit transactions of $25,000 or more in value to the Congress for oversight.

§ 254.4 Procedures.

Formal procedures for exchanges are outlined in these rules. Specific details are contained in Title 5400 of the Forest Service Manual.

§ 254.5 Initiating an exchange.

(a) Exchanges may be initiated by a private landowner, a non-Federal public agency, or the Forest Service. When an exchange proposal is made to the Forest Service, it should be made directly to the district ranger of the district where the non-Federal land is located.

(b) The party initiating an exchange should set forth the proposal in writing, including a statement of ownership or other right to make such an exchange. Permission should be clearly granted by each party to examine the lands of the other.

§ 254.6 Legal description of properties.

The lands proposed for exchange must be properly described and locatable under the survey laws and standards of the United States and the State. The lands may be described as part of a surveyed section or by metes and bounds survey. Any survey required is the responsibility of each owner unless otherwise negotiated.

§ 254.7 Appraisal.

The United States follows appraisal principles set forth in the Department of Justice publication titled "Uniform Appraisal Standards for Federal Land Acquisitions."

§ 254.8 Publication of proposed exchange.

(a) An exchange notice will be published for all exchanges once a week for four consecutive weeks in a newspaper(s) of general circulation in the area in which the lands proposed for exchange are located.

(b) The purpose of this notice is to advise the public of the exchange proposal. This will allow anyone having a claim to the lands to notify the appropriate Forest Service officer and present evidence supporting their claim. It also affords opportunity for objections to be submitted to the Forest Service. All claims and objections must be in writing and postmarked or delivered within 15 days of the final publication.

(c) The notice may be published when the lands that may be included in the exchange have been identified. The notice may describe lands which may not be a part of the exchange agreement (§ 254.11). It will not be necessary to republish the final land descriptions providing the lands were identified in a prior notice.

§ 254.9 Conditions imposed by other regulations and Executive orders.

A land exchange proposal must comply with all laws, regulations, and Executive orders.

§ 254.10 Approval.

(a) After preliminary negotiations which result in concurrence on an exchange proposal, the Forest Service will determine whether an environmental impact statement should be filed as provided in section 102(2)(C) of the National Environmental Policy Act of 1969 (83 Stat. 853). Objections received in response to the exchange notice in § 254.8 will be considered in making this determination.

(b) When an environmental impact statement need not be filed, the Forest Service will notify the exchange party and anyone who filed written objections of the decision whether or not the Forest Service will proceed with the exchange.

(c) When an environmental impact statement is filed, objections received in response to the exchange notice will be considered in the environmental statement. The decision on the exchange proposal will be sent to the objectors and the exchange party.

(d) Rights of appeal pursuant to the Secretary of Agriculture Appeal Regulations (36 CFR part 211, subpart B, 36 CFR 292.15(l)(1)) are applicable to the decisions.

(e) The authorized Forest Service officer may approve the exchange after the requirements (§§ 254.3, 254.10) have been met.

[43 FR 24830, June 8, 1978, as amended at 48 FR 28639, June 23, 1983]

§ 254.11 Exchange agreement.

(a) An exchange agreement may be entered into between the Forest Service and the exchange party. The agreement will identify the estates to be exchanged, all reservations and outstanding interests, any necessary cash equalization and all other terms and conditions which each party agrees to perform. The agreement may be executed after the Forest Service has approved the exchange. The agreement will be binding on both parties providing (1) acceptable title can be conveyed (§§ 254.14, 254.15); (2) no loss or damage occurs to either property from any cause and; (3) the decision to complete the exchange is upheld in accordance with 36 CFR part 211, subpart B, 36 CFR 292.15(l)(1).

(b) If an exchange agreement is not executed, no action taken by the parties to the exchange shall create or establish any contractual or other obligations or rights against either exchange party prior to the issuance of the patent, deed or other consideration by the United States.

[43 FR 24830, June 8, 1978, as amended at 48 FR 28639, June 23, 1983]

§ 254.12 Conveyance documents.

(a) The deed to the United States must be in a form that complies with the Department of Justice "Standards for the Preparation of Title Evidence in Land Acquisition by the United States."

(b) Conveyances from the United States will be either a quitclaim deed from the Department of Agriculture or a patent issued by the Department of the Interior. The type of document will depend on the status of the NFS land.

§ 254.13 Title evidence.

(a) Evidence of title of land or interests being conveyed to the United States must be in a form acceptable to the Department of Justice, as described in the "Standards for the Preparation of Title Evidence in Land Acquisition by the United States."

(b) The non-Federal landowner initiating an exchange proposal will usually bear the cost of the required title evidence. The Forest Service may pay the cost of title evidence when it is in the interest of the United States and provided for in the exchange agreement.

(c) The United States does not furnish formal title evidence to its land.

§ 254.14 Title approval.

Title to lands being conveyed to the United States will be approved by the Office of the General Counsel of the Department of Agriculture.

§ 254.15 Taxes, liens, and encumbrances.

Taxes, liens, and other encumbrances such as mortgages, deeds of trust and judgments must be eliminated or released in accordance with the requirements of the title opinion of the Office of the General Counsel.

Subpart B—National Forest Townsites

Source: 50 FR 29673, July 22, 1985, unless otherwise noted.

Authority: Pub. L. 85-569, 72 Stat. 438; 16 U.S.C. 478a, as amended by sec. 213, Pub. L. 94-579; 90 Stat. 2743.

§ 254.20 Purpose and scope.

(a) A Forest Service official may, upon application, set aside and designate for townsite purposes up to 640 acres of National Forest System lands adjacent to or contiguous to an established community in Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

(b) National Forest System lands, needed by a community, may be sold under the Townsite Act, for fair market value if those lands would serve indigenous community objectives that outweigh the public objectives and values of retaining the lands in Federal ownership. Indigenous community objectives may include space for housing and for service industries, expansion of existing economic enterprises, new industries utilizing local resources and skills, public schools, public health facilities, community parks, and other recreation areas for local citizens, but would exclude such uses as commercial enterprises or new industries and housing projects that would change the character of the local community.

§ 254.21 Applications.

(a) An application to purchase National Forest System lands—

(1) Must be made by designated official(s) authorized to do business in the name of a county, city, or local governmental subdivision;

(2) May be in the form of a letter, ordinance, or resolution;

(3) Must be furnished to the District Ranger or the Forest Supervisor for the National Forest area in which the lands are situated; and

(4) Must be limited to 640 acres or less adjacent to an established community.

(b) An application must be accompanied by—

(1) A description of the land desired; and

(2) A development plan, consisting of a narrative statement and map, which gives a detailed description of the intended use of the site and how essential community needs will be met by the purchase.

§ 254.22 Designation and public notice.

(a) A Forest Service official must—

(1) Ensure the application meets the requirements of § 254.21;

(2) Process an order to set aside and designate the lands for townsite purposes; and

(3) Transmit, where applicable, a copy of the designation order to the State Director, Bureau of Land Management.

(b) The designation order will segregate the lands from other forms of entry as long as the application remains in force.

(c) The designation order does not preclude compatible land adjustments under the Secretary's authority within the area set aside.

(d) A Forest Service official must prepare a public notice of the proposed townsite sale to be inserted once a week for 4 consecutive weeks in a local newspaper:

(1) The notice shall include descriptive information on the proposed townsite sale and identify the applicant and responsible Forest Service official; and

(2) A period of 45 days, from first date of publication, must be provided for accepting public comments.

§ 254.23 Studies, assessments, and approval.

(a) After initial public notice has been published, a Forest Service official must conduct the necessary studies and assessments to—

(1) Determine if the applicant has made a satisfactory showing that the land will meet essential community needs resulting from internal growth;

(2) Determine if lands applied for would serve indigenous community objectives that outweight other public objectives and values which would be served by maintaining such a tract in Federal ownership;

(3) Determine if the sale would substantially affect or impair important scenic, wildlife, environmental, historical, archeological, or cultural values;

(4) Evaluate the applicability of public comments;

(5) Identify the extent of valid existing rights and uses; and

(6) Determine if zoning ordinances, covenants, or standards are needed to protect adjacent National Forest land and to protect or mitigate valid existing rights and uses.

(b) Upon approval, the authorized Forest Service official shall take appropriate steps to have an assessment made of the fair market value of the land and process the conveyance pursuant to §§ 254.24, 254.25, and 254.26.

(c) Upon disapproval, a Forest Service official shall—

(1) Notify the applicant in writing of the reasons the proposal is not acceptable;

(2) Inform the applicant of alternate proposals under other authorities and/or appeal rights.

§ 254.24 Conveyance.

(a) Conveyance of the approved tract(s) may be made by a single transaction or by multiple transactions spread over a period of time in accordance with a prearranged schedule.

(b) The authorized Forest Service official shall—

(1) Execute and convey title to the townsite tract(s) by quitclaim deed;

(2) Ensure deeds are free of terms and covenants, except those deemed necessary to ensure protection of adjacent National Forest System land and/or valid existing rights and uses; and

(3) Deliver executed deeds to the governmental body upon—

(i) Adoption of zoning ordinance and development plan if found necessary; and

(ii) Notice from the authorized Forest Service Fiscal Agent that payment has been received.

§ 254.25 Survey.

The authorized Forest Service official shall conduct or provide for the necessary tract survey and boundary posting of National Forest System land.

§ 254.26 Appraisal.

Fair market value of townsite tracts shall be determined following Forest Service appraisal procedures and the Uniform Standards for Federal Acquisitions.

Subpart C—Conveyance of Small Tracts

AUTHORITY: Pub. L. 97-465; 96 Stat. 2535.

SOURCE: 49 FR 1185, Jan. 10, 1984, unless otherwise noted.

§ 254.30 Purpose.

These regulations set forth procedures by which the Secretary of Agriculture may resolve land disputes and management problems pursuant to Pub. L. 97-465, commonly called the Small Tracts Act, by conveying, through sale, exchange, or interchange, three categories of tracts of land: Parcels encroached on, road rights-of-way, and mineral survey fractions. Implementation of these regulations does not constitute authorization of nor consent to adverse possession against lands administered by the Secretary of Agriculture.

§ 254.31 Definitions.

For the purpose of this subpart,

An *applicant* is a person who occupies or has improvements on National Forest System land under claim of title or color of title, or who owns land abutting or underlying a road right-of-way, or who owns land interspersed with or adjacent to mineral survey fractions.

Approximately equal value is a comparative estimate of value of lands involved in an interchange where elements of value, such as physical characteristics and other amenities, are readily apparent and substantially similar.

Claim of title is a claim of land as a person's own, based on any reasonable evidence which establishes the person's actual use of the land as though the person had full title thereto from the time the person obtained ownership of abutting land.

Color of title arises from an instrument purporting to convey title to a tract of land.

Encroachments are improvements occupied or used on National Forest System land under claim of title or color of title.

Exchange is a discretionary, voluntary transaction involving mutual transfers of land or interests in land between the Secretary of Agriculture acting by and through the Forest Service and a nonfederal entity.

Good faith is honesty of intention and freedom from knowledge of circumstances which ought to put a prudent person upon inquiry.

Improvements mean an addition to property costing labor or capital which affects its value. The term generally includes fixtures, structures and attendant facilities, or buildings.

Interchange is a land transfer in which the Secretary and another person exchange lands or interests in lands of approximately equal value without a formal appraisal.

Mineral survey fractions are small parcels of National Forest System lands interspersed with or adjacent to lands transferred out of Federal ownership under the mining laws.

Person includes any nonfederal entity such as a State or any political subdivision as well as any individual or business entity.

Secretary refers to the Secretary of the United States Department of Agriculture.

§ 254.32 Encroachments.

(a) Conveyances under this subpart are limited to tracts of 10 acres or less to resolve encroachments by persons:

(1) To whom no advance notice was given that the improvements encroached or would encroach, and

(2) Who in good faith relied on an erroneous survey, title search, or other land description which did not reveal such encroachment.

(b) Forest Service officials shall consider the following factors when determining whether to convey lands upon which encroachments exist:

(1) The location of the property boundaries based on historical location and continued acceptance and maintenance,

(2) Factual evidence of claim of title or color of title,

(3) Notice given to persons encroaching on National Forest System lands,

(4) Degree of development in the encroached upon area, and

(5) Creation of an uneconomic remnant.

§ 254.33 Road rights-of-way.

(a) Reserved or acquired road right-of-way parcels subject to conveyance under this subpart are limited to those which are substantially surrounded by lands not owned by the United States.

(b) Forest Service officials shall consider public road system right-of-way needs based on National Forest transportation planning and State and local law before making any conveyance of rights-of-way.

(c) Reimbursement will be required for the value of any improvements made by the United States or other highway authorities, unless waived by the Chief of the Forest Service.

§ 254.34 Mineral survey fractions.

(a) Mineral survey fractions subject to conveyance under this subpart are limited to those tracts which:

(1) Cannot be efficiently administered because of size, shape, or location;

(2) Are occupied or could be occupied or used by adjoining owners; and

(3) When sold separately or aggregated in one transaction, do not exceed 40 acres.

(b) Forest Service officials shall consider the following criteria in determining whether to convey mineral survey fractions under this subpart:

(1) The mineral survey fractions are interspersed among and are more or less an integral part of private land holdings;

(2) The feasibility and cost of surveying the parcels in order to manage them effectively;

(3) The size, shape, and location of the parcels as they affect management, utility, access, occupancy or use of the parcels or the lands with which they are interspersed.

§ 254.35 Limitations.

(a) Lands within the National Wilderness Preservation System, the National Wild and Scenic Rivers System, the National Trails System, and National Monuments are excluded from any conveyance under these provisions.

(b) Lands within National Recreation Areas may not be conveyed by sale under this subpart.

(c) The value of Federal lands conveyed in any transaction, pursuant to this subpart, shall not exceed $150,000.

(d) Compensation for lands conveyed shall be of at least equal value, or in the case of interchange, of approximately equal value, and may be in the form of land, interest in land (including minerals), or cash, or any combination thereof.

(e) The sale, exchange, or interchange of lands or interest in lands under these rules are discretionary and shall be made only if found to be in the public interest.

(f) The abutting landowner(s) shall have the first right of acquisition.

(g) The area of land conveyed shall be limited to the minimum necessary to resolve encroachment or land management problems.

[49 FR 1185, Jan. 10, 1984; 49 FR 2762, Jan. 23, 1984]

§ 254.36 Determining public interest.

(a) The requirements of § 254.35 and of one of § 254.32, § 254.33, or § 254.34 must be met before a determination of public interest can be made.

(b) Before a conveyance is made under this subpart, such conveyance must be determined to be in the public interest.

(c) Forest Service officials shall consider the following criteria in determining when the public interest will be served:

(1) Sale, exchange, or interchange of the affected lands is not practicable under any other authority of the Secretary;

(2) Administration and management of National Forest System lands will be more efficient and will result in improved utilization;

(3) Access to and use and enjoyment of National Forest System lands by the general public will not be unduly impeded or restricted;

(4) New or extensive inholdings which would create management problems will not be established;

(5) Scenic, wildlife, environmental, historical, archaeological, or cultural values will not be substantially affected or impaired;

(6) Existence of structures authorized under a special use permit or easement, and

(7) Applicable Federal, State, and local laws, rules, regulations, and zoning ordinances will not be violated.

§§ 254.37—254.39 [Reserved]

§ 254.40 Applications.

(a) A request for conveyance of National Forest System land must be made in writing to the District Ranger or the Forest Supervisor who has administrative jurisdiction over the land.

(b) The applicant shall bear all reasonable costs of administration, survey, and appraisal incidental to the conveyance.

(c) Costs incidental to the conveyance may be waived at the discretion of the Chief of the Forest Service.

§ 254.41 Public sale or exchange in absence of application.

(a) Mineral survey fractions or road rights-of-way which have not been applied for by an abutting landowner may be offered to the public for sale or exchange at not less than fair market value.

(b) Public notice of a proposed sale of land for which there is no applicant shall be published once a week for four consecutive weeks in a local newspaper prior to the date of sale.

(c) The public notice shall describe the lands to be sold, minimum acceptable price, conditions of sale, sealed or oral bid procedures, date and location of sale.

§ 254.42 Valuation of tracts.

(a) Approximately equal value shall be determined by comparing and evaluating the elements of value on the lands or interest in lands to be interchanged. Elements of value to be considered include size, shape, location, physical attributes, functional utility, proximity of other similar sites, and amenities in the immediate environs of the parcel. Findings that tracts are approximately equal in value shall be documented. An applicant must signify acceptance of the value determination by signing the documented findings prior to the interchange.

(b) Equal value in sale or exchange transactions shall be developed by recognized appraisal methods following Forest Service appraisal procedures and the Uniform Appraisal Standards for Federal Land Acquisition. The date of the value estimate will be current with the date of sale or exchange.

(c) Improvements to National Forest System land made by any persons other than the Government may be excluded from the property value determinations.

§ 254.43 Surveys.

All necessary tract surveys of National Forest System land shall be conducted by a licensed private surveyor under Forest Service instructions, contracted by the person applying for the conveyance, or by a Forest Service surveyor. The person will also be required to have all Federal property boundaries resulting from a conveyance marked and posted to Forest Service standards.

§ 254.44 Document of conveyance.

(a) Title to the United States may be conveyed by quitclaim or warranty deed. The United States will convey title only by quitclaim deed.

(b) Deeds shall be free of terms, conditions, and convenants except those deemed necessary to ensure protection of the public interest.

(c) A copy of all documents of conveyance will be transmitted after recordation, where applicable, to the appropriate State Office of the Bureau of Land Management.

PART 261—PROHIBITIONS

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AUTHORITY: 16 U.S.C. 551; 16 U.S.C. 472; 7 U.S.C. 1011(f); 16 U.S.C. 1246(i); 16 U.S.C. 1133(c)-(d)(1).

SOURCE: 42 FR 2957, Jan. 14, 1977, unless otherwise noted.

Subpart A—General Prohibitions

§ 261.1 Scope.

(a) The prohibitions in this part apply, except as otherwise provided, when:

(1) An act or omission occurs in the National Forest System or on a Forest development road or trail.

(2) An act or omission affects, threatens, or endangers property of the United States administered by the Forest Service.

(3) An act or omission affects, threatens, or endangers a person using, or engaged in the protection, improvement or administration of the National Forest System or a Forest development road or trail.

(4) An act or omission occurs within the designated boundaries of a component of the National Wild and Scenic Rivers System.

(b) Nothing in this part shall preclude activities as authorized by the Wilderness Act of 1964 or the U.S. Mining Laws Act of 1872 as amended.

[42 FR 35958, July 13, 1977, as amended at 43 FR 32136, July 25, 1978; 46 FR 33519, June 30, 1981]

§ 261.1a Special use authorizations, contracts and operating plans.

The Chief, each Regional Forester, each Forest Supervisor, and each District Ranger or equivalent officer may issue special-use authorizations, award contracts, or approve operating plans authorizing the occupancy or use of a road, trail, area, river, lake, or other part of the National Forest System in accordance with authority which is delegated elsewhere in this Chapter or in the Forest Service Manual. These Forest Officers may permit in the authorizing document or approved plan an act or omission that would otherwise be a violation of a Subpart A or Subpart C regulation or a Subpart B order. In authorizing such uses, the Forest Officer may place such conditions on the authorization as that officer considers necessary for the protection or administration of the National Forest System, or for the promotion of public health, safety, or welfare.

[49 FR 25450, June 21, 1984]

§ 261.1b Penalty.

Any violation of the prohibitions of this part (261) shall be punished by a fine of not more than $500 or imprisonment for not more than six months or both pursuant to Title 16 U.S. Code section 551, unless otherwise provided.

[46 FR 33519, June 30, 1981]

§ 261.2 Definitions.

The following definitions apply to this part:

Archaeological resource means any material remains of prehistoric or historic human life or activities which are of archaeological interest and are at least 50 years of age, and the physical site, location, or context in which they are found.

Campfire means a fire, not within any building, mobile home or living accommodation mounted on a motor vehicle, which is used for cooking, personal warmth, lighting, ceremonial, or esthetic purposes. *Fire* includes campfire.

Camping means the temporary use of National Forest System lands for the purpose of overnight occupancy without a permanently-fixed structure.

Camping equipment means the personal property used in or suitable for camping, and includes any vehicle used for transportation and all equipment in possession of a person camping. Food and beverage are not considered camping equipment.

Damaging means to injure, mutilate, deface, destroy, cut, chop, girdle, dig, excavate, kill or in any way harm or disturb.

Developed recreation site means an area which has been improved or developed for recreation.

Forest development road means a road wholly or partly within or adjacent to and serving a part of the National Forest System and which has been included in the Forest Development Road System Plan.

Forest development trail means a trail wholly or partly within or adjacent to and serving a part of the National Forest System and which has been included in the Forest Development Trail System Plan.

Forest officer means an employee of the Forest Service.

Historical resource means any structural, architectural, archaeological, artifactual or other material remains of past human life or activities which are of historical interest and are at least 50 years of age, and the physical site, location, or context in which they are found.

Motorized equipment means any machine activated by a nonliving power source except small battery-powered handcarried devices such as flashlights, shavers, Geiger counters, and cameras.

Motor vehicle means any vehicle which is self-propelled or any vehicle which is propelled by electric power obtained from batteries, but not operated on rails.

National Forest System includes all national forest lands and waters reserved or withdrawn from the public domain of the United States, national forest lands and waters acquired through purchase, exchange, donation, or other means, national grasslands and land utilization projects and waters administered under Title III of the Bankhead-Jones Farm Tenant Act (50 Stat. 525, 7 U.S.C. 1010-1012), and other lands, waters, or interests therein acquired under the Wild and Scenic River Act (16 U.S.C. 1271-1287) or National Trails System Act (16 U.S.C. 1241-1249).

National Forest wilderness means those parts of the National Forest System which were designated units of the National Wilderness Preservation System by the Wilderness Act of September 3, 1964, and such other areas of the National Forest System as are added to the wilderness system by act of Congress.

Operating plan means a plan of operations as provided for in 36 CFR part 228, subpart A, and a surface use plan of operations as provided for in 36 CFR part 228, subpart E.

Paleontological resource means any evidence of fossilized remains of multicellular invertebrate and vertebrate animals and multicellular plants, including imprints thereof. Organic remains primarily collected for use as fuel such as coal and oil are Paleontological Resources, but are excluded from the prohibitions under the rule.

Person means natural person, corporation, company, partnership, trust, firm, or association of persons.

Permission means oral authorization by a forest officer.

Permit means authorization in writing by a forest officer.

Prehistoric resource means any structural, architectural, archaeological, artifactual or other material remains of past human life or activity generally prior to the advent of written records and of anthropological interest, and the physical site, location, or context in which they are found.

Primitive areas are those areas within the National Forest System classified as *Primitive* on the effective date of the Wilderness Act, September 3, 1964.

Publicly nude means nude in any place where a person may be observed by another person. Any person is nude if the person has failed to cover the rectal area, pubic area or genitals. A female person is also nude if she has failed to cover both breasts below a point immediately above the top of the areola. Each such covering must be fully opaque. No person under the age of 10 years shall be considered publicly nude.

Special-use authorization means a permit, term permit, lease or easement which allows occupancy, or use rights or privileges of National Forest System land.

State means any State, the Commonwealth of Puerto Rico, and the District of Columbia.

State law means the law of any State in whose exterior boundaries an act or omission occurs regardless of whether State law is otherwise applicable.

Stove fire means a campfire built inside an enclosed stove or grill, a portable brazier, or a pressurized liquid or gas stove, including a space-heating device.

Unauthorized livestock means any cattle, sheep, goat, hog, or equine not definded as a wild free-roaming horse or burro by § 222.20(b)(13), which is not authorized by permit to be upon the land on which the livestock is located and which is not related to use authorized by a grazing permit; provided, that noncommerical pack and saddle stock used by recreationists, travelers, other Forest visitors for occasional trips, as well as livestock to be trailed over an established driveway when there is no overnight stop on Forest Service administered land do not fall under this definition.

Vehicle means any device in, upon, or by which any person or property is or may be transported, including any frame, chassis, or body of any motor vehicle, except devices used exclusively upon stationary rails or tracks.

Volunteer or hosted enrollee means any person, not a Forest Service employee, officially participating in a Forest Service human resource program as authorized by an act of Congress and identified to accomplish one or more of the following objectives: provide skills training; education; useful work; develop understanding of ecological systems and conservation of natural resources; build cultural and communication bridges between various socioeconomic groups; and further the administration, development, and management of National Forest resources, forest research, and State and Private Forest activities.

Wild free-roaming horses and burros mean all unbranded and unclaimed horses and burros and their progeny that have used lands of the National Forest System on or after December 15, 1971, or do hereafter use these lands as all or part of their habitat, but does not include any horse or burro introduced onto National Forest System lands on or after December 15, 1971, by accident, negligence, or willful disregard of private ownership. Unbranded, claimed horses and burros, where the claim is found to be erroneous, are also considered as wild and free-roaming if they meet the criteria above.

[42 FR 2957, Jan. 14, 1977, as amended at 42 FR 35959, July 13, 1977; 46 FR 33519, June 30, 1981; 47 FR 29230, July 6, 1982; 49 FR 25450, June 24, 1984; 51 FR 1250, Jan. 10, 1986; 55 FR 10452, Mar. 21, 1990]

§ 261.3 Interfering with a Forest officer, volunteer, or human resource program enrollee or giving false report to a Forest officer.

The following are prohibited:

(a) Threatening, resisting, intimidating, or interfering with any forest officer engaged in or on account of the performance of his official duties in the protection, improvement, or administration of the National Forest System is prohibited.

(b) Giving any false, fictitious or fraudulent report or other information to any Forest Officer engaged in or on account of the performance of his official duties knowing that such report or other information contains false, fictitious or fraudulent statement or entry.

(c) Threatening, intimidating, or intentionally interfering with any Forest officer, volunteer, or human resource program enrollee while engaged in, or on account of, the performance of duties for the protection, improvement, or administration of the National Forest System or other duties assigned by the Forest Service.

[42 FR 2957, Jan. 14, 1977, as amended at 46 FR 33520, June 30, 1981; 49 FR 25450, June 21, 1984]

§ 261.4 Disorderly conduct.

The following are prohibited:

(a) Engaging in fighting.

(b) Addressing any offensive, derisive, or annoying communication to any other person who is lawfully present when such communication has a direct tendency to cause acts of violence by the person to whom, individually, the remark is addressed.

(c) Make statements or other actions directed toward inciting or producing imminent lawless action and likely to incite or produce such action.

(d) Causing public inconvenience, annoyance, or alarm by making unreasonably loud noise.

[46 FR 33520, June 30, 1981]

§ 261.5 Fire.

The following are prohibited:

(a) Carelessly or negligently throwing or placing any ignited substance or other substance that may cause a fire.

(b) Firing any tracer bullet or incendiary ammunition.

(c) Causing timber, trees, slash, brush or grass to burn except as authorized by permit.

(d) Leaving a fire without completely extinguishing it.

(e) Allowing a fire to escape from control.

(f) Building, attending, maintaining, or using a campfire without removing all flammable material from around the campfire adequate to prevent its escape.

[42 FR 2957, Jan. 14, 1977, as amended at 46 FR 33520, June 30, 1981]

§ 261.6 Timber and other forest products.

The following are prohibited:

(a) Cutting or otherwise damaging any timber, tree, or other forest product, except as authorized by a special-use authorization, timber sale contract, or Federal law or regulation.

(b) Cutting any standing tree, under permit or timber sale contract, before a Forest Officer has marked it or has otherwise designated it for cutting.

(c) Removing any timber or other forest product cut under permit or timber sale contract, except to a place designated for scaling, or removing it from that place before it is scaled, measured, counted, or otherwise accounted for by a forest officer.

(d) Stamping, marking with paint, or otherwise identifying any tree or other forest product in a manner similar to that employed by forest officers to mark or designate a tree or any other forest product for cutting or removal.

(e) Loading, removing or hauling timber or other forest product acquired under any permit or timber sale contract unless such product is identified as required in such permit or contract.

(f) Selling or exchanging any timber or other forest product obtained under free use pursuant to §§223.5 through 223.11.

(g) Violating any timber export or substitution restriction in §§ 223.160 through 223.164.

(h) Removing any timber, tree or other forest product, except as authorized by a special-use authorization, timber sale contract, or Federal law or regulation.

[42 FR 2957, Jan. 14, 1977; 42 FR 24739, May 16, 1977, as amended at 49 FR 25450, June 21, 1984; 51 FR 1250, Jan. 10, 1986]

§ 261.7 Livestock.

The following are prohibited:

(a) Placing or allowing unauthorized livestock to enter or be in the National Forest System or other lands under Forest Service control.

(b) Not removing unauthorized livestock from the National Forest System or other lands under Forest Service control when requested by a forest officer.

(c) Failing to reclose any gate or other entry.

(d) Molesting, injuring, removing, or releasing any livestock impounded under § 262.10 while in the custody of the Forest Service or its authorized agents.

[42 FR 35959, July 13, 1977, as amended at 51 FR 1251, Jan. 10, 1986]

§ 261.8 Fish and wildlife.

The following are prohibited to the extent Federal or State law is violated:

(a) Hunting, trapping, fishing, catching, molesting, killing or having in possession any kind of wild animal, bird, or fish, or taking the eggs of any such bird.

(b) Possessing a firearm or other implement designed to discharge a missile capable of destroying animal life.

(c) Possessing equipment which could be used for hunting, fishing, or trapping.

(d) Possessing a dog not on a leash or otherwise confined.

[42 FR 2957, Jan. 14, 1977, as amended at 46 FR 33520, June 30, 1981]

§ 261.9 Property.

The following are prohibited:

(a) Damaging any natural feature or other property of the United States.

(b) Removing any natural feature or other property of the United States.

(c) Damaging any plant that is classified as a threatened, endangered, sentitive, rare, or unique species.

(d) Removing any plant that is classified as a threatened, endangered, sentitive, rare, or unique species.

(e) Entering any building, structure, or enclosed area owned or controlled by the United States when such building, structure, or enclosed area is not open to the public.

(f) Using any pesticide except for personal use as an insect repellent or as provided by special-use authorization for other minor uses.

(g) Digging in, excavating, disturbing, injuring, destroying, or in any way damaging any prehistoric, historic, or archaeological resource, structure, site, artifact, or property.

(h) Removing any prehistoric, historic, or archaeological resource, structure, site, artifact, property.

(i) Excavating, damaging, or removing any vertebrate fossil or removing any paleontological resource for commercial purposes without a special use authorization.

[46 FR 33520, June 30, 1981, as amended at 49 FR 25450, June 21, 1984; 51 FR 30356, Aug. 26, 1986]

§ 261.10 Occupancy and use.

The following are prohibited:

(a) Constructing, placing, or maintaining any kind of road, trail, structure, fence, enclosure, communication equipment, or other improvement on National Forest system land or facilities without a special-use authorization, contract, or approved operating plan.

(b) Taking possession of, occupying, or otherwise using National Forest System lands for residential purposes without a special-use authorization, or as otherwise authorized by Federal law or regulation.

(c) Selling or offering for sale any merchandise or conducting any kind of work activity or service unless authorized by Federal law, regulation, or special-use authorization.

(d) Discharging a firearm or any other implement capable of taking human life, causing injury, or damaging property: (1) In or within 150 yards of a residence, building, campsite, developed recreation site or occupied area, or (2) across or on a Forest Development road or a body of water adjacent thereto, or in any manner or place whereby any person or property is exposed to injury or damage as a result in such discharge.

(e) Abandoning any personal property.

(f) Placing a vehicle or other object in such a manner that it is an impediment or hazard to the safety or convenience of any person.

(g) Disseminating, posting, placing, or erecting any paper, notice, advertising material, sign, handbill, petition, or similar written and/or graphic matter without a special use authorization.

(h) Operating or using in or near a campsite, developed recreation site, or over an adjacent body of water without a permit, any device which produces noise, such as a radio, television, musical instrument, motor or engine in such a manner and at such a time so as to unreasonably disturb any person.

(i) Operating or using a public address system, whether fixed, portable or vehicle mounted, in or near a campsite or developed recreation site or over an adjacent body of water without a special-use authorization.

(j) Use or occupancy of National Forest System land or facilities without special-use authorization when such authorization is required.

(k) Violating any term or condition of a special-use authorization, contract or approved operating plan.

(l) Failing to stop a vehicle when directed to do so by a Forest Officer.

(m) Failing to pay any special use fee or other charges as required.

[42 FR 2957, Jan. 14, 1977, as amended at 46 FR 33520, June 30, 1981; 49 FR 25450, June 21, 1984; 53 FR 16550, May 10, 1988]

§ 261.11 Sanitation.

The following are prohibited:

(a) Depositing in any toilet, toilet vault, or plumbing fixture any substance which could damage or interfere with the operation or maintenance of the fixture.

(b) Possessing or leaving refuse, debris, or litter in an exposed or unsanitary condition.

(c) Placing in or near a stream, lake, or other water any substance which does or may pollute a stream, lake, or other water.

(d) Failing to dispose of all garbage, including any paper, can, bottle, sewage, waste water or material, or rubbish either by removal from the site or area, or by depositing it into receptacles or at places provided for such purposes.

(e) Dumping of any refuse, debris, trash or litter brought as such from private property or from land occupied under permit, except, where a container, dump or similar facility has been provided and is identified as such, to receive trash generated from private lands or lands occupied under permit.

[42 FR 2957, Jan. 14, 1977, as amended at 46 FR 33520, June 30, 1981]

§ 261.12 Forest development roads and trails.

The following are prohibited:

(a) Violating the load, weight, height, length, or width limitations prescribed by State law except by special-use authorization or written agreement or by order issued under § 261.54 of this Chapter.

(b) Failing to have a vehicle weighed at a Forest Service weighing station, if required by a sign.

(c) Damaging and leaving in a damaged condition any such road, trail, or segment thereof.

(d) Blocking, restricting, or otherwise interfering with the use of a road, trail, or gate.

[42 FR 2957, Jan. 14, 1977, as amended at 46 FR 33520, June 30, 1981; 49 FR 25450, June 21, 1984; 55 FR 25832, June 25, 1990]

Effective Date Note: At 55 FR 25832, June 25, 1990, § 261.12 was amended by removing paragraph (e), effective July 25, 1990. For the convenience of the user, the superseded text follows.

§ 261.12 Forest development roads and trails.

* * * * *

(e) Using motorized vehicles in excess of 40 inches in width on a trail.

§ 261.13 Use of vehicles off roads.

It is prohibited to operate any vehicle off Forest Development, State or County roads:

(a) Without a valid license as required by State law.

(b) Without an operable braking system.

(c) From one-half hour after sunset to one-half hour before sunrise unless equipped with working head and tail lights.

(d) In violation of any applicable noise emission standard established by any Federal or State agency.

(e) While under the influence of alcohol or other drug;

(f) Creating excessive or unusual smoke;

(g) Carelessly, recklessly, or without regard for the safety of any person, or in a manner that endangers, or is likely to endanger, any person or property.

(h) In a manner which damages or unreasonably disturbs the land, wildlife, or vegetative resources.

(i) In violation of State law established for vehicles used off roads.

[42 FR 2957, Jan. 14, 1977, as amended at 42 FR 35959, July 13, 1977]

§ 261.14 Developed recreation sites.

The following are prohibited:

(a) Occupying any portion of the site for other than recreation purposes.

(b) Building, attending, maintaining, or using a fire outside of a fire ring provided by the Forest Service for such purpose or outside of a stove, grill or fireplace.

(c) Cleaning or washing any personal property, fish, animal, or food, or bathing or washing at a hydrant or water faucet not provided for that purpose.

(d) Discharging or igniting a firecracker, rocket or other firework, or explosive.

(e) Occupying between 10 p.m. and 6 a.m. a place designated for day use only.

(f) Failing to remove all camping equipment or personal property when vacating the area or site.

(g) Placing, maintaining, or using camping equipment except in a place specifically designated or provided for such equipment.

(h) Without permission, failing to have at least one person occupy a camping area during the first night after camping equipment has been set up.

(i) Leaving camping equipment unattended for more than 24 hours without permission.

(j) Bringing in or possessing an animal, other than a seeing eye dog, unless it is crated, caged, or upon a leash not longer than six feet, or otherwise under physical restrictive control.

(k) Bringing in or possessing in a swimming area an animal, other than a seeing eye dog.

(l) Bringing in or possessing a saddle, pack, or draft animal except as authorized by posted instructions.

(m) Operating or parking a motor vehicle or trailer except in places developed or designated for this purpose.

(n) Operating a bicycle, motorbike, or motorcycle on a trail unless designated for this use.

(o) Operating a motorbike, motorcycle, or other motor vehicle for any purpose other than entering or leaving the site.

(p) Distributing any handbill, circular, paper or notice without a special-use authorization.

(q) Depositing any body waste except into receptales provided for that purpose.

[42 FR 2957, Jan. 14, 1977, as amended at 46 FR 33520, June 30, 1981; 49 FR 25450, June 21, 1984]

§ 261.15 Admission, recreation use and special recreation permit fees.

Failing to pay any fee established for admission or entrance to or use of a site, facility, equipment or service furnished by the United States is prohibited. The maximum fine shall not exceed $100.

(Sec. 2, 78 Stat. 897, as amended; 16 U.S.C. 460l-6(e))

[46 FR 33520, June 30, 1981]

§ 261.16 National Forest Wilderness.

The following are prohibited in a National Forest Wilderness:

(a) Possessing or using a motor vehicle, motorboat or motorized equipment except as authorized by Federal Law or regulation.

(b) Possessing or using a hang glider or bicycle.

(c) Landing of aircraft, or dropping or picking up of any material, supplies, or person by means of aircraft, including a helicopter.

[42 FR 2957, Jan. 14, 1977, as amended at 42 FR 35959, July 13, 1977; 50 FR 16231, Apr. 25, 1985]

§ 261.17 Boundary Waters Canoe Area Wilderness.

The following are prohibited in the Boundary Waters Canoe Area Wilderness:

(a) Possessing or transporting any motor or other mechanical device capable of propelling a watercraft through water by any means, except by permit or as specifically authorized by Federal law or regulation.

(b) Transporting, using, or mooring amphibious craft of any type or any watercraft designed for or used as floating living quarters.

(c) Using wheels, rollers, or other mechanical devices for the overland transportation of any watercraft, except by special-use authorization, or as authorized by Federal law or regulation.

[42 FR 2957, Jan. 14, 1977; 42 FR 24739, May 16, 1977, as amended at 49 FR 25450, June 21, 1984; 50 FR 16231, Apr. 25, 1985]

§ 261.18 Pacific Crest National Scenic Trail.

It is prohibited to use a motorized vehicle on the Pacific Crest National Scenic Trail without a special-use authorization.

[49 FR 25450, June 21, 1984]

§ 261.19 National Forest primitive areas.

The following are prohibited in any area classified as a National Forest Primitive Area on September 3, 1964:

(a) Landing of aircraft or using a motor boat, unless such use had become well established before September 3, 1964.

(b) Possessing or using a motor or motorized equipment, except small battery powered, hand-held devices, such as cameras, shavers, flashlights, and Geiger-counters.

[42 FR 35959, July 13, 1977]

§ 261.20 Unauthorized use of "Smokey Bear" and "Woodsy Owl" symbol.

(a) Manufacture, importation, reproduction, or use of "Smokey Bear" except as provided under §§ 271.2, 271.3, or 271.4 is prohibited.

(b) Manufacture, importation, reproduction, or use of "Woodsy Owl" except as provided under §§ 272.2, 272.3, or 272.4 is prohibited.

[42 FR 2957, Jan. 14, 1977; 42 FR 24739, May 16, 1977]

§ 261.21 Wild free-roaming horses and burros.

The following are prohibited:

(a) Removing or attempting to remove a wild free-roaming horse or burro from the National Forest System unless authorized by law or regulation.

(b) Causing or allowing the inhumane treatment or harassment of a wild free-roaming horse or burro.

(c) Removing or attempting to remove, alter or destroy any official mark used to identify a wild horse or burro or its remains unless authorized or permitted by law or regulation.

(d) Violating any terms or conditions specified in a care and maintenance agreement or permit.

[46 FR 33520, June 30, 1981]

Subpart B—Prohibitions in Areas Designated by Order

§ 261.50 Orders.

(a) The Chief, each Regional Forester, each Experiment Station Director, the Administrator of the Lake Tahoe Basin Management Unit and each Forest Supervisor may issue orders which close or restrict the use of described areas within the area over which he has jurisdiction. An order may close an area to entry or may restrict the use of an area by applying any or all of the prohibitions authorized in this subpart or any portion thereof.

(b) The Chief, each Regional Forester, each Experiment Station Director, the Administrator of the Lake Tahoe Basin Management Unit and each Forest Supervisor may issue orders which close or restrict the use of any forest development road or trail within the area over which he has jurisdiction.

(c) Each order shall:

(1) For orders issued under paragraph (a) of this section, describe the area to which the order applies;

(2) For orders issued under paragraph (b) of this section, describe the road or trail to which the order applies;

(3) Specify the times during which the prohibitions apply if applied only during limited times;

(4) State each prohibition which is applied; and

(5) Be posted in accordance with § 261.51.

(d) The prohibitions which are applied by an order are supplemental to the general prohibitions in Subpart A.

(e) An order may exempt any of the following persons from any of the prohibitions contained in the order:

(1) Persons with a permit specifically authorizing the otherwise prohibited act or omission.

(2) Owners or lessees of land in the area;

(3) Residents in the area;

(4) Any Federal, State, or local officer, or member of an organized rescue or fire fighting force in the performance of an offical duty; and

(5) Persons engaged in a business, trade, or occupation in the area.

(6) Any other person meeting exemption requirements specified in the order.

(f) Any person wishing to use a Forest development road or trail or a portion of the National Forest System, should contact the Forest Supervisor, Director, Administrator, or District Ranger to ascertain the special restrictions which may be applicable thereto.

[42 FR 2957, Jan. 14, 1977; 42 FR 24739, May 16, 1977, as amended at 42 FR 35959, July 13, 1977; 46 FR 33521, June 30, 1981]

§ 261.51 Posting.

Posting is accomplished by:

(a) Placing a copy of the order imposing each prohibition in the offices of the Forest Supervisor and District Ranger, or equivalent officer who have jurisdiction over the lands affected by the order, and

(b) Displaying each prohibition imposed by an order in such locations and manner as to reasonably bring the prohibition to the attention of the public.

§ 261.52 Fire.

When provided by an order, the following are prohibited:

(a) Building, maintaining, attending or using a fire, campfire, or stove fire.

(b) Using an explosive.

(c) Smoking.

(d) Smoking, except within an enclosed vehicle or building, a developed recreation site, or while stopped in an area at least three feet in diameter that is barren or cleared of all flammable material.

(e) Going into or being upon an area.

(f) Possessing, discharging or using any kind of firework or other pyrotechnic device.

(g) Entering an area without any firefighting tool prescribed by the order.

(h) Operating an internal combustion engine.

(i) Welding, or operating an acetylene or other torch with open flame.

(j) Operating or using any internal or external combustion engine without a spark arresting device properly installed, maintained and in effective working order meeting either: (1) Department of Agriculture, Forest Service Standard 5100-1a; or (2) appropriate Society of Automotive Engineers (SAE) recommended practice J335(b) and J350(a).

(k) Violating any state law specified in the order concerning burning, fires or which is for the purpose of preventing, or restricting the spread of fires.

[42 FR 2957, Jan. 14, 1977; 42 FR 24739, May 16, 1977; as amended at 42 FR 35959, July 13, 1977; 46 FR 33521, June 30, 1981]

§ 261.53 Special closures.

When provided in an order, it is prohibited to go into or be upon any area which is closed for the protection of:

(a) Threatened, endangered, rare, unique, or vanishing species of plants, animals, birds or fish.

(b) Special biological communities.

(c) Objects or areas of historical, archeological, geological, or paleontological interest.

(d) Scientific experiments or investigations.

(e) Public health or safety.

(f) Property.

§ 261.54 Forest development roads.

When provided by an order, the following are prohibited:

(a) Using any type of vehicle prohibited by the order.

(b) Use by any type of traffic prohibited by the order.

(c) Using a road for commercial hauling without a permit or written authorization.

(d) Operating a vehicle in violation of the speed, load, weight, height, length, width, or other limitations specified by the order.

(e) Being on the road.

(f) Operating a vehicle carelessly, recklessly, or without regard for the rights or safety of other persons or in a manner or at a speed that would endanger or be likely to endanger any person or property.

[42 FR 2957, Jan. 14, 1977, as amended at 46 FR 33521, June 30, 1981]

§ 261.55 Forest development trails.

When provided by an order issued in accordance with § 261.50 of this subpart, the following are prohibited on a forest development trail:

(a) Being on a trail.

(b) Using any type of vehicle prohibited by the order.

(c) Use by any type of traffic or mode of transport prohibited by the order.

(d) Operating a vehicle in violation of the width, weight, height, length, or other limitations specified by the order.

(e) Shortcutting a switchback in a trail.

[55 FR 25832, June 25, 1990]

Effective Date Note: At 55 FR 25832, June 25, 1990, § 261.55 was revised, effective July 25, 1990. For the convenience of the user, the superseded text appears below.

§ 261.55 Forest development trails.

When provided by an order, the following are prohibited:

(a) Being on the trail.

(b) Using a bicycle or motorized vehicle.

(c) Possessing or using a saddle, pack, or draft animal.

(d) Shortcutting a switchback.

§ 261.56 Use of vehicles off forest development roads.

When provided by an order, it is prohibited to possess or use a vehicle off forest development roads.

§ 261.57 National Forest wilderness.

When provided by an order, the following are prohibited:

(a) Entering or being in the area.

(b) Possessing camping or pack-outfitting equipment, as specified in the order.

(c) Possessing a firearm or firework.

(d) Possessing any non-burnable food or beverage containers, including deposit bottles, except for non-burnable containers designed and intended for repeated use.

(e) Grazing.

(f) Storing equipment, personal property or supplies.

(g) Disposing of debris, garbage, or other waste.

(h) Possessing or using a wagon, cart or other vehicle.

[42 FR 2957, Jan. 14, 1977, as amended at 49 FR 25450, June 21, 1984]

§ 261.58 Occupancy and use.

When provided by an order, the following are prohibited:

(a) Camping for a period longer than allowed by the order.

(b) Entering or using a developed recreation site or portion thereof.

(c) Entering or remaining in a campground during night periods prescribed in the order except for persons who are occupying such campgrounds.

(d) Occupying a developed recreation site with prohibited camping equipment prescribed by the order.

(e) Camping.

(f) Using a campsite or other area described in the order by more than the number of users allowed by the order.

(g) Parking or leaving a vehicle in violation of posted instructions.

(h) Parking or leaving a vehicle outside a parking space assigned to one's own camp unit.

(i) Possessing, parking or leaving more than two vehicles, except motorcycles or bicycles per camp unit.

(j) Being publicly nude.

(k) Entering or being in a body of water.

(l) Being in the area after sundown or before sunrise.

(m) Discharging a firearm, air rifle, or gas gun.

(n) Possessing or operating a motorboat.

(o) Water skiing.

(p) Storing or leaving a boat or raft.

(q) Operating any watercraft in excess of a posted speed limit.

(r) Launching a boat except at a designated launching ramp.

(s) Possessing, storing, or transporting any bird, fish, or other animal or parts thereof, as specified in the order.

(t) Possessing, storing, or transporting any part of a tree or other plant, as specified in the order.

(u) Being in the area between 10 p.m. and 6 a.m. except a person who is camping or who is visiting a person camping in that area.

(v) Hunting or fishing.

(w) Possessing or transporting any motor or mechanical device capable of propelling a watercraft through water by any means.

(x) Using any wheel, roller, or other mechanical device for the overland transportation of any watercraft.

(y) Landing of aircraft, or dropping or picking up any material, supplies, or person by means of an aircraft, including a helicopter.

(z) Entering or being on lands or waters within the boundaries of a component of the National Wild and Scenic Rivers System.

(aa) Riding, hitching, tethering or hobbling a horse or other saddle or pack animal in violation of posted instructions.

(bb) Possessing a beverage which is defined as an alcoholic beverage by State law.

(cc) Possessing or storing any food or refuse, as specified in the order.

[42 FR 2597, Jan. 14, 1977, as amended at 42 FR 35959, July 13, 1977; 43 FR 32136, July 25, 1978; 46 FR 33521, June 30, 1981; 52 FR 19347, May 22, 1987]

Subpart C—Prohibitions in Regions

§ 261.70 Issuance of regulations.

(a) Pursuant to 7 CFR 2.60, the Chief, and each Regional Forester, to whom the Chief has delegated authority, may issue regulations prohibiting acts or omissions within all or any part of the area over which he has jurisdiction, for one or more of the following purposes:

(1) Fire prevention or control.

(2) Disease prevention or control.

(3) Protection of property, roads, or trails.

(4) Protection of threatened, endangered, rare, unique, or vanishing species of plants, animals, birds or fish, or special biological communities.

(5) Protection of objects or places of historical, archaeological, geological or paleontological interest.

(6) Protection of scientific experiments or investigations.

(7) Public safety.

(8) Protection of health.

(9) Establishing reasonable rules of public conduct.

(b) Regulations issued under this subpart shall not be contrary to or duplicate any prohibition which is established under existing regulations.

(c) In issuing any regulations under paragraph (a) of this section, the issuing officer shall follow 5 U.S.C. 553.

(d) In a situation when the issuing officer determines that a notice of proposed rule making and public participation thereon is impracticable, unnecessary, or contrary to the public interest, he shall issue, with the concurrence of the Chief, an interim regulation containing an expiration date.

(e) No interim regulation issued under paragraph (d) of this section will be effective for more than 90 days unless readopted as a permanent rule after a notice of proposed rule making under 5 U.S.C. 553 (b) and (c).

§ 261.71 Regulations applicable to Region 1, Northern Region, as defined in § 200.2. [Reserved]

§ 261.72 Regulations applicable to Region 2, Rocky Mountain Region, as defined in § 200.2. [Reserved]

§ 261.73 Regulations applicable to Region 3, Southwestern Region, as defined in § 200.2. [Reserved]

§ 261.74 Regulations applicable to Region 4, Intermountain Region, as defined in § 200.2. [Reserved]

§ 261.75 Regulations applicable to Region 5, California Region, as defined in § 200.2.

(a) *Definitions.* In this section: (1) "Middle Fork of the Feather River" means the river and land area in or adjacent to Plumas National Forest described as the "River Area" in the notice at 35 FR 4219 or any amendment to that notice.

(2) "Motorized equipment" means any equipment having or using an engine or motor, except small battery-powered handheld devices such as cameras, shavers, flashlights, and Geiger counters.

(3) "Wild river zone" means the area described as the Bald Rock Canyon Wild River Zone or as the Upper Canyon Wild River Zone in the notice at 35 FR 4219 or any amendment to that notice.

(b) *Prohibitions.* (1) Possessing or using motorized equipment in the wild river zone of the Middle Fork of the Feather River, except on the Stag Point Trail or the Cleghorn Bar Trail, is prohibited.

(2) Paragraph (b)(1) of this section does not apply to any equipment authorized by a permit from the Forest Supervisor, Plumas National Forest, containing such terms and conditions as he considers necessary for the protection or preservation of the wild river zone or the health, safety or welfare of its users. Violation of any term or condition of such a permit is prohibited.

[42 FR 31789, June 23, 1977]

§ 261.76 Regulations applicable to Region 6, Pacific Northwest Region, as defined in § 200.2. [Reserved]

§ 261.77 Prohibitions in Region 8, Southern Region.

(a) Using or occupying any area of the Sumter National Forest or the Chattahoochee National Forest abutting the Chattooga River for the purpose of entering or going upon the River in, on, or upon any floatable object or craft of every kind or description, unless authorized by permit obtained through registration at Forest Service Registration Stations abutting the Chattooga River located at Highway 28, Low-Water Bridge, Earl's Ford, Sandy Ford, Highway 76, Woodall Shoals, or Overflow Bridge or unless authorized under special use permit.

(b) Using or occupying within the scope of any commercial operation or business any area of the Sumter National Forest or the Chattahoochee National Forest abutting the Chattooga River for the purpose of entering or going upon the River in, on, or upon any floatable object or craft of every kind or description, unless authorized by special use permit.

(c) Violating or failing to comply with any of the terms or conditions of any permit authorizing the occupancy and use specified in paragraphs (a) or (b) of this section is prohibited.

(d) Entering, going, riding, or floating upon any portion or segment of the Chattooga River within the boundaries of the Chattahoochee National Forest in, on, or upon any floatable object or craft of every kind of description, unless authorized by a permit obtained through registration at Forest Service Registration Stations abutting the Chattooga River located at Highway 28, Low-Water Bridge, Earl's Ford, Sandy Ford, Highway 76, Woodall Shoals, or Overflow Bridge or unless authorized under special use permit.

(e) Entering, going, riding, or floating within the scope of any commercial operation or business upon any portion or segment of the Chattooga River within the boundaries of the Chattahoochee National Forest in, on, or upon any floatable object or craft of every kind or description, unless authorized by special use permit.

(f) Violating or failing to comply with any of the terms or conditions of any permit authorizing the occupancy and use specified in paragraph (d) or (e) of this section is prohibited.

[43 FR 3706, Jan. 27, 1978]

§ 261.78 Prohibitions applicable to Region 9, Eastern Region, as defined in § 200.2.

(a) Using or occupying any area of the Manistee National Forest abutting the Pine River between a point commencing 1 mile downstream from Lincoln Bridge to a point one-half mile upstream from Stronach Dam, for the purpose of entering, leaving, or going upon the river, in, on, or upon any floatable object of any kind or description during specific dates set forth annually and posted in such locations and manner as to reasonably bring the closure and dates to the attention of the public, is prohibited unless otherwise authorized by permit.

[43 FR 42749, Sept. 21, 1978]

§ 261.79 Regulations applicable to Region 10, Alaska Region, as defined in § 200.2. [Reserved]

PART 262—LAW ENFORCEMENT SUPPORT ACTIVITIES

Subpart A—Rewards and Payments

Secs.

262.1 Rewards in connection with fire or property prosecution.
262.2 Purchase of information in furtherance of investigations.
262.3 Purchase of evidence in furtherance of investigations.
262.4 Audit of expenditures.
262.5 Disposal of purchased property.

Subpart B—Impoundments and Removals

262.10 Impoundment and disposal of unauthorized livestock.
262.11 Impounding of dogs.
262.12 Impounding of personal property.
262.13 Removal of obstructions.

AUTHORITY: 30 Stat. 35, as amended (16 U.S.C. 551); sec. 1, 33 Stat. 628 (16 U.S.C. 472); 50 Stat. 526 as amended (7 U.S.C. 1011(f)); 58 Stat. 736 (16 U.S.C. 559(a)).

Subpart A—Rewards and Payments

§ 262.1 Rewards in connection with fire or property prosecutions.

(a) Hereafter, provided Congress shall make the necessary appropriation or authorize the payment thereof, the Department of Agriculture will pay the following rewards:

(1) Not exceeding $5,000 for information leading to the arrest and conviction of any person on the charge of willfully or maliciously setting on fire, or causing to be set on fire, any timber, underbrush, or grass upon the lands of the United States within the National Forest System or nearby.

(2) Not exceeding $1,000 for information leading to the arrest and conviction of any person on the charge of having kindled or caused to be kindled a fire on lands of the United States within the National Forest System or nearby, and leaving said fire which escapes before the same has been totally extinguished;

(3) Not exceeding $5,000 for information leading to the arrest and conviction of any person charged with destroying or stealing any property of the United States; and

(b) A reward may be paid to the person or persons giving the information leading to such arrest and conviction upon presentation to the Department of Agriculture of satisfactory evidence thereof, subject to the necessary appropriation as aforesaid, or otherwise as may be provided.

(c) Officers and employees of the Department of Agriculture are barred from receiving such rewards.

(d) The Department of Agriculture reserves the right to refuse payments of any claim for reward when, in its opinion, collusion or improper methods have been used to secure arrest and conviction. The Department also reserves the right to allow only one reward where several persons have been convicted of the same offense or where one person has been convicted of several offenses, unless the circumstances entitle the person to a reward on each conviction.

(e) Applications for reward should be forwarded to the Regional Forester, Research Director, or Area Director who has responsibility for the land or property involved in the trespass. However, no application will be considered unless presented to a responsible Forest Service officer within three months from the date of conviction of an offender. In order that all claimants for rewards may have an opportunity to present their claims within the prescribed limit, the Department will not take action with respect to rewards for three months from the date of the conviction of an offender.

[42 FR 2961, Jan. 14, 1977, as amended at 46 FR 33521, June 30, 1981]

§ 262.2 Purchase of information in furtherance of investigations.

(a) *Approval of payments.* Payments for purchase of information to further investigations of felonies and misdemeanors related to Forest Service administration are authorized for each transaction as follows:

(1) Criminal investigators in the GS-1811 series and such other personnel as the Chief of the Forest Service or a Regional Forester may designate, may, without prior approval, pay up to but not exceeding $200 for the purchase of information under this section.

(2) For payments of amounts over $200 but not exceeding $500, advance approval of the Forest Supervisor is required.

(3) For payments of amounts over $500 but not exceeding $2,500, advance approval of the Regional Forester is required.

(4) For payments of amounts over $2,500, advance approval of the Chief of the Forest Service is required.

(5) For purchase of information to further investigations within a Regional Office, Forest and Range Experiment Station, State and Private Forestry Area Office, or the National Office, payments in excess of $200 must be approved in advance by the Chief of the Forest Service or by such other personnel as the Chief may designate.

(b) *Limitations.* Purchase of information under this section is restricted to furthering investigations of felony and misdemeanor violations. Payment for information to further investigations of petty offenses as classified in

Title 18, U.S. Code, section 1, are not authorized under this section.

[48 FR 26604, June 9, 1983]

§ 262.3 Purchase of evidence in furtherance of investigations.

(a) *Approval of payments.* Payments for purchase of evidence to further investigations of felonies and misdemeanors related to Forest Service administration are authorized for each transaction as follows:

(1) Criminal investigators in the GS-1811 series and such other personnel as the Chief of the Forest Service or a Regional Forester may designate, may, without prior approval, pay up to but not exceeding $400 for the purchase of evidence under this section.

(2) For payments of amounts over $400 but not exceeding $1,000, advance approval of the Forest Supervisor is required.

(3) For payments of amounts over $1,000 but not exceeding $5,000, advance approval of the Regional Forester is required.

(4) For payments of amounts over $5,000, advance approval of the Chief of the Forest Service is required.

(5) For purchase of evidence to further investigations within a Regional Office, Forest and Range Experiment Station, State and Private Forestry Area Office, or the National Office, payments in excess of $400 must be approved in advance by the Chief of the Forest Service or by such other personnel as the Chief may designate.

(b) *Limitations.* Purchase of evidence under this section is restricted to furthering investigations of felony and misdemeanor violations. Payment for evidence to further investigations of petty offenses as classified in Title 18, U.S. Code, Section 1, are not authorized under this section.

[48 FR 26605, June 9, 1983; 48 FR 34262, July 28, 1983]

§ 262.4 Audit of expenditures.

The Chief of the Forest Service shall, through appropriate directives to agency personnel, assure the accountability of all funds spent in carrying out the provisions of this subpart and safeguard the identity of those wishing to remain anonymous.

[48 FR 26605, June 9, 1983]

§ 262.5 Disposal of purchased property.

All evidence purchased under the authority of this subpart shall be maintained in accordance with all laws, regulations, and rules applicable to the care, custody, and control of evidence. Evidence purchased under this subpart shall be disposed of in accordance with laws, regulation, rules, and Forest Service policy applicable to the disposal of evidence.

[48 FR 26605, June 9, 1983]

Subpart B—Impoundments and Removals

§ 262.10 Impoundment and disposal of unauthorized livestock.

Unauthorized livestock or livestock in excess of those authorized by a grazing permit on the National Forest System, which are not removed therefrom within the periods prescribed by this regulation, may be impounded and disposed of by a forest officer as provided herein.

(a) When a Forest officer determines that such livestock use is occurring, has definite knowledge of the kind of livestock, and knows the name and address of the owners, such livestock may be impounded any time five days after written notice of intent to impound such livestock is mailed by certified or registered mail or personally delivered to such owners.

(b) When a Forest officer determines that such livestock use is occurring, but does not have complete knowledge of the kind of livestock, or if the name of the owner is unknown, such livestock may be impounded any time 15 days after the date a notice of intent to impound livestock is first published in a local newspaper and posted at the county courthouse and in one or more local post offices. The notice will identify the area in which it will be effective.

(c) Unauthorized livestock or livestock in excess of those authorized by a grazing permit on National Forest System which are owned by persons given notice under paragraph (a) of this section, and any such livestock in areas for which a notice has been posted and published under paragraph (b) of this section, may be impounded without further notice any time within the 12-month period immediately following the effective date of the notice or notices given under paragraphs (a) and (b) of this section.

(d) Following the impoundment of livestock, a notice of sale of impounded livestock will be published in a local newspaper and posted at the county courthouse and in one or more local post offices. The notice will describe the livestock and specify the date, time, and place of the sale. The date shall be at least five days after the publication and posting of such notice.

(e) The owner may redeem the livestock any time before the date and time set for the sale by submitting proof of ownership and paying for all expenses incurred by the United States in gathering, impounding, and feeding or pasturing the livestock. However, when the impoundment costs exceed fair market value a minimum acceptable redemption price at fair market value may be established for each head of livestock.

(f) If the livestock are not redeemed on or before the date and time fixed for their sale, they shall be sold at public sale to the highest bidder, providing this bid is at or above the minimum amount set by the Forest Service. If a bid at or above the minimum amount is not received, the livestock may be sold at private sale at or above the minimum amount, reoffered at public sale, condemned and destroyed, or otherwise disposed of. When livestock are sold pursuant to this regulation, the forest officer making the sale shall furnish the purchaser a bill or other written instrument evidencing the sale. Agreements may be made with State agencies whereby livestock of unknown ownership and livestock of known ownership, which are not redeemed by the owner, are released to the agency for disposal in accordance with State law, *Provided*, That remuneration of proceeds from the sale of said animals in excess of costs of impoundment and to arrange for disposal of livestock of known ownership will be refunded to the former owner.

[42 FR 2961, Jan. 14, 1977, as amended at 43 FR 36245, Aug. 16, 1978. Redesignated at 48 FR 26605, June 9, 1983]

§ 262.11 Impounding of dogs.

Any dog found running at large in a part of the National Forest System, which has been closed to dogs running at large, may be captured and impounded by Forest officers. Forest officers will notify the owner of the dog, if known, of such impounding, and the owner will be given five days to redeem the dog. A dog may be redeemed by the owner submitting adequate evidence of ownership and paying all expenses incurred by the Forest Service in capturing and impounding it. If the owner fails to redeem the dog within five days after notice, or if the owner cannot be ascertained within 10 days from the date of impounding, the dog may be destroyed or otherwise disposed of at the discretion of the Forest officer having possession of it.

[42 FR 2961, Jan. 14, 1977. Redesignated at 48 FR 26605, June 9, 1983]

§ 262.12 Impounding of personal property.

(a) Automobiles or other vehicles, trailers, boats, and camping equipment and other inanimate personal property on National Forest System lands without the authorization of a Forest officer which are not removed therefrom within the prescribed period after a warning notice as provided in this regulation may be impounded by a Forest officer. Whenever such Forest officer knows the name and address of the owner, such impoundment may be effected at any time five days after the date that written notice of the trespass is mailed by registered mail or delivered to such owner.

(b) In the event the local Forest officer does not know the name and address of the owner, impoundment may be effected at any time 15 days after the date a notice of intention to impound the property in trespass is first published in a local newspaper and posted at the county courthouse and in one or more local post offices. A copy of this notice shall also be posted in at least one place on the property or in proximity thereto.

(c) Personal property impounded under this regulation may be disposed of at the expiration of 90-days after the date of impoundment. The owner may redeem the personal property within the 90-day period by submitting proof of ownership and paying all expenses incurred by the United States in advertising, gathering, moving, impounding, storing, and otherwise caring for the property, and also for the value of the use of the site occupied during the period of the trespass.

(d) If the personal property is not redeemed on or before the date fixed for its disposition, it shall be sold by the Forest Service at public sale to the highest bidder. If no bid is received, the property, or portions thereof, may, in the discretion of the responsible Forest officer, be sold at private sale or be condemned and destroyed or otherwise disposed of. When personal property is sold pursurant to this regulation, the Forest officer making the sale shall furnish the purchaser a bill of sale or other written instrument evidencing the sale.

(e) The provisions of this section shall not apply to the impoundment or disposal of beached logs in Alaska if deemed abandoned under State law.

[42 FR 2961, Jan. 14, 1977, as amended at 46 FR 33521, June 30, 1981. Redesignated at 48 FR 26604, June 9, 1983]

§ 262.13 Removal of obstructions.

A Forest officer may remove or cause to be removed, to a more suitable place, a vehicle or other object which is an impediment or hazard to the safety, convenience, or comfort of other users of an area of the National Forest System.

[42 FR 2961, Jan. 14, 1977. Redesignated at 48 FR 26604, June 9, 1983]

PART 264—PROPERTY MANAGEMENT

Subpart A—Official Forest Service Insignia

Sec.
264.1 Definitions.
264.2 Use of insignia.
264.3 Licensing for commercial use.
264.4 Unauthorized use.
264.5 Power to revoke.

Subpart B—Mount St. Helens National Volcanic Monument Symbol

264.10 Establishment.
264.11 Use of symbol.
264.12 Use without permission.
264.13 Unauthorized use.

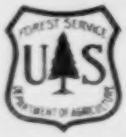
AUTHORITY: 5 U.S.C. 301.

Subpart A—Official Forest Service Insignia

SOURCE: 49 FR 7367, Feb. 29, 1984, unless otherwise noted.

§ 264.1 Definitions.

(a) The term "Insignia" means the Official Forest Service Insignia as shown here



or any likeness thereof, in total or in part, which is used in such a manner as to suggest the insignia.

(b) The term "Chief" means the Chief of the Forest Service, U.S. Department of Agriculture, or a person designated to act for the Chief.

§ 264.2 Use of insignia.

The Forest Service insignia is reserved for the official use of the Forest Service. Such use will be primarily for identification purposes. The Chief may authorize other uses of the insignia as follows:

(a) *Public service use.* The Chief may authorize the use of the insignia for non-commercial educational purposes, without charge when such use is essentially a public service and will contribute to public knowledge and understanding of the Forest Service, its mission, and objectives. An example of this would be the use of the insignia on a printed program for a dedication ceremony where the Forest Service participates but is not the sponsor of the event.

(b) *Commercial use.* Through the issuance of licenses, the Chief may authorize commercial use of the insignia to (1) contribute to the public recognition of the Forest Service, such as a likeness of the insignia on a toy forest ranger's truck or (2) promote employee esprit de corps or pride in the organization, such as a likeness of the insignia on belt buckles. Such use must be consistent with the status of a national insignia. Business or calling cards commercially prepared for employees, at employee expense, may display the insignia without special license.

§ 264.3 Licensing for commercial use.

(a) Each commercial license granted for the use of the insignia or likeness thereof shall contain the following terms and conditions:

(1) A use charge, royalty payment, or payment in kind which is reasonably related to the commercial value of the license must be established. This is to be paid by the licensee.

(2) A definite expiration date shall be specified.

(3) The license shall be nonexclusive.

(4) Licensees are not authorized to grant sublicenses, or transfer or reassign licenses to another person or company, in connection with the manufacture and/or sale of an item, unless and except as approved in writing by the Chief.

The Chief may incorporate additional terms and requirements into any commercial license issued under this subpart.

§ 264.4 Unauthorized use.

Whoever manufactures, sells, or possesses the insignia, except as provided under § 264.2, is subject to criminal penalty under 18 U.S.C. 701.

§ 264.5 Power to revoke.

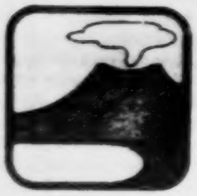
All authorities and licenses granted under this subpart shall be subject to cancellation by the Chief at any time the Chief finds that the use involved is offensive to decency and good taste or injurious to the image of the Forest Service. The Chief may also revoke any license or authorization when there is a failure to comply with the terms and conditions of the license or authorization.

Subpart B—Mount St. Helens National Volcanic Monument Symbol

Source: 49 FR 31413, Aug. 7, 1984, unless otherwise noted.

§ 264.10 Establishment.

There is hereby established an official symbol, as depicted herein, to designate and represent the Mount St. Helens National Volcanic Mounment located in the Gifford Pinchot National Forest in the State of Washington.



§ 264.11 Use of symbol.

Except as provided in § 264.12, use of the Mount St. Helens National Volcanic Monument official symbol, including a facsimile thereof, in total or in part, is restricted to official signs, publications, and other materials of the Forest Service, U.S. Department of Agriculture.

§ 264.12 Use without permission.

Business or calling cards commercially prepared at employee expense for employees assigned to the Volcanic Monument may depict the official Monument symbol without special permission from Forest Service officials.

§ 264.13 Unauthorized use.

Except as provided in §§ 264.11 and 264.12, whoever manufactures, sells, or possesses the official symbol of the Mount St. Helens National Volcanic Monument may be subject to criminal penalty under 18 U.S.C. 701.

PART 271—USE OF "SMOKEY BEAR" SYMBOL

Sec.
271.1 Definitions.
271.2 Use of official campaign materials.
271.3 Public service use.
271.4 Commercial license.
271.5 [Reserved]
271.6 Review of licenses.
271.7 Power to revoke.
271.8 Consultation with Association of State Foresters and the Advertising Council.

AUTHORITY: 66 Stat. 92 (18 U.S.C. 711).

SOURCE: 27 FR 6928, July 21, 1962, unless otherwise noted.

§ 271.1 Definitions.

(a) The term "Smokey Bear" as used in the regulations in this part means the character "Smokey Bear" originated by the Forest Service of the United States Department of Agriculture in cooperation with the Association of State Foresters and The Advertising Council, or any facsimile thereof, or the name "Smokey Bear," or any name or designation sufficiently similar as to suggest the character "Smokey Bear".

(b) The term "Chief" means the Chief of the Forest Service, United States Department of Agriculture, or person designated to act for him.

(c) The term "Association of State Foresters" means the national organization of State Foresters.

(d) The term "The Advertising Council" is the Advertising Council, Inc., organized under the laws of the State of New York.

§ 271.2 Use of official campaign materials.

Official Cooperative Forest Fire Prevention materials may be used without express approval where such use is solely for the purpose of increasing public information regarding forest fire prevention.

§ 271.3 Public service use.

The Chief may authorize the use of "Smokey Bear" for non-commercial educational purposes, without charge, when such use is essentially as a public service, and will, in his judgment, contribute to public information and education concerning the prevention of forest fires.

§ 271.4 Commercial license.

(a) The Chief may authorize the commercial manufacture, importation, reproduction, or use of "Smokey Bear" upon the following findings:

(1) That the use to which the article or published material involving Smokey Bear is to be put shall contribute to public information concerning the prevention of forest fires.

(2) That the proposed use is consistent with the status of Smokey Bear as the symbol of forest fire prevention and does not in any way detract from such status.

(3) That a use or royalty charge which is reasonably related to the commercial enterprise has been established.

(b) Such other conditions shall be included as the Chief deems necessary in particular cases.

§ 271.5 [Reserved]

§ 271.6 Review of licenses.

The Chief will cooperate with the Association of State Foresters and the Advertising Council, and for this purpose may review with these organizations from time to time the nature and status of licenses granted under these regulations in this part.

§ 271.7 Power to revoke.

It is the intention of the regulations in this part that the Chief, in exercising the authorities delegated hereunder, will at all times consider the primary purpose of fostering public information in the prevention of forest fires. All authorities and licenses granted under the regulations in this part shall be subject to abrogation by the Chief at any time he finds that the use involved is injurious to the purpose of forest fire prevention, is offensive to decency or good taste, or for similar reasons in addition to any other limitations and terms contained in the licenses.

§ 271.8 Consultation with Association of State Foresters and the Advertising Council.

These regulations in this part have been issued after consultation with the Association of State Foresters and the Advertising Council.

PART 272—USE OF "WOODSY OWL" SYMBOL

Sec.
272.1 Definitions.
272.2 Use of official campaign materials.
272.3 Public service use.
272.4 Commercial use.
272.5 [Reserved]
272.6 Power to revoke.

AUTHORITY: 7 U.S.C. 2201 and 16 U.S.C. 528-531.

§ 272.1 Definitions.

(a) The term "Woodsy Owl" means the name and representation of a fanciful owl, who wears slacks (forest green when colored), a belt (brown when colored), and a Robin Hood style hat (forest green when colored) with a feather (red when colored), and who furthers the slogan, "Give a Hoot, Don't Pollute," originated by the Forest Service of the United States Department of Agriculture, or a facsimile or simulation thereof, in such a manner as suggests "Woodsy Owl."

(b) The term "Chief" means the Chief of the Forest Service, U.S. Department of Agriculture, or person designated to act for him.

[36 FR 23220, Dec. 7, 1971, as amended at 40 FR 12641, Mar. 20, 1975]

§ 272.2 Use of official campaign materials.

Official materials produced for the "Woodsy Owl" campaign may be used without express approval from the Chief of the Forest Service where such use is solely for the purpose of increasing public knowledge about wise use of the environment and programs which foster maintenance and improvement of environmental quality.

[40 FR 12641, Mar. 20, 1975]

§ 272.3 Public service use.

The Chief of the Forest Service may authorize the use of "Woodsy Owl" for noncommercial educational purposes, without charge, when such use is essentially as a public service and will, in his judgment, contribute to public information and education concerning wise use of the environment and programs which foster maintenance and improvement of environmental quality.

[40 FR 12641, Mar. 20, 1975]

§ 272.4 Commercial use.

(a) *General.* The Chief may authorize the Commercial manufacture, importation, reproduction, or use of "Woodsy Owl" upon the following findings:

(1) That the proposed use of "Woodsy Owl" will contribute to public knowledge about wise use of the environment and programs which foster maintenance and improvement of environmental quality.

(2) That the proposed use is consistent with the status of "Woodsy Owl" as a national symbol for a public service campaign to promote wise use of the environment and programs which foster maintenance and improvement of environmental quality.

(3) That a use charge, royalty charge, or payment in kind which is reasonably related to the commercial value has been established.

(4) That the applicant is well qualified to further the goals and purposes of the "Woodsy Owl" campaign.

(5) That, when an exclusive license is requested, no other qualified applicant can be found who will provide comparable campaign support under a nonexclusive license.

(6) That such other conditions as the Chief may deem necessary in each case have been established.

(b) *Requirements for exclusive licenses.* Exclusive licenses when granted, shall conform to the following:

(1) A definite expiration date shall be specified based on the minimum time determined by the Chief to be needed by the licensee to introduce or popularize the item licensed and to recover the costs and expenses incurred in so doing.

(2) The Chief shall retain the independent right to use "Woodsy Owl" in any concurrent, noncommercial program, and to allow for the manufacture and sale of "Woodsy Owl" merchandise which, in his judgment, would not be in conflict with the licensed item.

(3) The licensee shall be required to have the licensed item available for sale, and promotion within a specified period, or show cause why this could not be done.

(4) The licensee shall be required to invest a specified minimum amount of money in the development, production, and promotion of the licensed item, as determined by the Chief to be necessary to insure that the licensee's use of "Woodsy Owl" will result in a substantial contribution to public information concerning pollution abatement and environmental enhancement.

(5) The Chief shall retain the right to revoke any license for failure of the licensee to comply with all the terms and conditions of the license.

(6) The licensee shall be required to submit periodic progress reports to apprise the Forest Service of his activities and progress in achieving stated objectives.

(7) The license shall not be subject to transfer or assignment, except as approved in writing by the Chief.

(8) The licensee shall not be authorized to grant sublicenses in connection with the manufacture and sale of the item, except as approved in writing by the Chief.

[37 FR 5700, Mar. 18, 1972, as amended at 40 FR 12641, Mar. 20, 1975]

§ 272.5 [Reserved]

§ 272.6 Power to revoke.

It is the intention of these regulations that the Chief, in exercising the authorities delegated hereunder, will at all times consider the primary purpose of carrying on a public service campaign to promote wise use of the environment and programs which foster maintenance and improvement of environmental quality. All authorities and licenses granted under these regulations shall be subject to abrogation by the Chief at any time he finds that the use involved is injurious to the purpose of the "Woodsy Owl" campaign, is offensive to decency or good taste, or for similar reasons, in addition to any other limitations and terms contained in the licenses and other authorities.

[40 FR 12641, Mar. 20, 1975]

PART 290—RECREATION MANAGEMENT [RESERVED]

PART 291—OCCUPANCY AND USE OF DEVELOPED SITES AND AREAS OF CONCENTRATED PUBLIC USE

Sec.
291.9 Admission fees and recreation use fees.
291.10 Reservation fees.

AUTHORITY: 30 Stat. 35, as amended (16 U.S.C. 551); sec. 1, 33 Stat. 628 (16 U.S.C. 472); sec. 4(b,c), Pub. L. 92-347, 86 Stat. 459, as amended (16 U.S.C. 460*l*-6a); sec. 10(d), Pub. L. 90-542, 82 Stat. 916 (16 U.S.C. 1281(d)); sec. 7(i), Pub. L. 90-543, 82 Stat. 925, as amended (16 U.S.C. 1246(i)); sec. 4(b), Pub. L. 88-577, 78 Stat. 893 (16 U.S.C. 1133(b)); sec. 4(a), Pub. L. 95-495, 92 Stat. 1650; 96 Stat. 1051 (31 U.S.C. 9701).

§ 291.9 Admission fees and recreation use fees.

(a) Fees will be charged for admission or entrance to designated units of National Recreation Areas administered by the Department of Agriculture as provided by section 4(a) of the Land and Water Conservation Fund Act of 1965, as amended. Such fees shall be established by the Chief, Forest Service, or his delegate.

(b) Recreation use fees will be charged for the use of sites, facilities, equipment or services furnished at Federal expense as provided by section 4(b) of the Land and Water Conservation Fund Act of 1965, as amended. Such fees shall be established by the Chief, Forest Service, or his delegate.

(c) Clear notice that an admission or entrance fee or recreation use fee has been established shall be prominently posted at each area and at appropriate locations therein and shall be included in publications distributed at such areas.

[39 FR 30037, Aug. 20, 1974, as amended at 42 FR 35959, July 13, 1977]

§ 291.10 Reservation fees.

(a) The Forest Service may charge fees to recover expenses incurred in providing reservation services for the public use of recreation areas and sites and Wilderness Areas where limitations on use are deemed necessary or desirable to achieve the management purposes of an area of the National Forest System. The Chief of the Forest Service or his delegate shall establish the amount of such fees.

(b) Forest Service officials shall prominently post clear notice that a reservation fee has been established at each area, site or Wilderness Area and at appropriate locations therein. Publications distributed at such areas, sites, and Wilderness Areas shall also include such notice.

[51 FR 26827, July 25, 1986]

PART 292—NATIONAL RECREATION AREAS

Subpart A—General

Sec.
292.1—292.10 [Reserved]

Subpart B—Whiskeytown-Shasta-Trinity National Recreation Area

292.11 Introduction.
292.12 General provisions; procedures.
292.13 Standards.

Subpart C—Sawtooth National Recreation Area—Private Lands

292.14 Introduction.
292.15 General provisions—procedures.
292.16 Standards.

Subpart D—Sawtooth National Recreation Area—Federal Lands

292.17 General provisions.
292.18 Mineral resources.

Subpart E—[Reserved]

Subpart F—Hells Canyon National Recreation Areas

292.40 Purpose and scope.
292.41 Definitions.

Sec.
292.42 Comprehensive management plan.
292.43 Management standards and guidelines.

Subpart A—General

§§ 292.1—292.10 [Reserved]

Subpart B—Whiskeytown-Shasta-Trinity National Recreation Area

AUTHORITY: Sec. 1, 30 Stat. 35, as amended, 62 Stat. 100, Sec. 1, 33 Stat. 628; 16 U.S.C. 551, 472.

SOURCE: 38 FR 5853, Mar. 5, 1973, unless otherwise noted.

§ 292.11 Introduction.

(a) Administration of the Shasta and Clair Engle-Lewiston Units will be coordinated with the other purposes of the Central Valley Project of the Bureau of Reclamation and of the recreation area as a whole so as to provide for: (1) Public outdoor recreation benefits; (2) conservation of scenic, scientific, historic, and other values contributing to public enjoyment; and (3) the management, utilization, and disposal of renewable natural resources which in the judgment of the Secretary of Agriculture will promote or is compatible with, and does not significantly impair, public recreation and conservation of scenic, scientific, historic, or other values contributing to public enjoyment.

(b) The Secretary may not acquire without consent of the owner any privately owned "improved property" or interests therein within the boundaries of these units, so long as the appropriate local zoning agency shall have in force and applicable to such property a duly adopted, valid, zoning ordinance that is approved by the Secretary. This suspension of the Secretary's authority to acquire "improved property" without the owner's consent would automatically cease: (1) If the property is made the subject of a variance or exception to any applicable zoning ordinance that does not conform to the applicable standards contained in §§ 292.11 to 292.13; or (2) if such property is put to any use which does not conform to any applicable zoning ordinance approved by the Secretary.

(c) "Improved property" as used in §§ 292.11 to 292.13, means any building or group of related buildings, the actual construction of which was begun before February 7, 1963, together with not more than three acres of land in the same ownership on which the building or group of buildings is situated, but the Secretary may exclude from such "improved property" any shore or waters, together with so much of the land adjoining such shore or waters, as he deems necessary for public access thereto.

(d) Sections 292.11 to 292.13 specify the standards with which local zoning ordinances for the Shasta and Clair Engle-Lewiston Units must conform if the "improved property" or unimproved property proposed for development as authorized by the Act within the boundaries of the units is to be exempt from acquisition by condemnation. The objectives of §§ 292.11 to 292.13 are to: (1) Prohibit new commercial or industrial uses other than those which the Secretary considers to be consistent with the purposes of the act establishing the national recreation area; (2) promote the protection and development of properties in keeping with the purposes of that Act by means of use, acreage, setback, density, height or other requirements; and (3) provide that the Secretary receive notice of any variance granted under, or any exception made to, the application of the zoning ordinance approved by him.

(e) Following promulgation of §§ 292.11 to 292.13 of final form, the Secretary is required to approve any zoning ordinance or any amendment to an approved zoning ordinance submitted to him which conforms to the standards contained in the regulations in effect at the time of adoption of the ordinance or amendment.

(f) Any owner of unimproved property who proposes to develop his property for service to the public may submit to the Secretary a development plan setting forth the manner in which and the time by which the property is to be developed and the use to which it is proposed to be put. If the Secretary determines that the development and the use of the property conforms to approved zoning ordinances, and serves the purposes of the National Recreation Area and that the property is not needed for easements and rights-of-way for access, utilities, or facilities, or for administration sites, campgrounds, or other areas needed for use by the United States for visitors, he may in his discretion issue to such owner a certification that so long as the property is developed, maintained, and used in conformity with approved zoning ordinances the Secretary's authority to acquire the property without the owner's consent is suspended.

§ 292.12 General provisions; procedures.

(a) *Approval of zoning ordinance and development plans.* (1) All validly adopted zoning ordinances and amendments thereto pertaining to the Shasta and Clair Engle-Lewiston Units may be submitted by the county of origin to the Secretary for written approval relative to their conformance with the applicable standards of §§ 292.11 to 292.13. Within 60 days following submission, the county will be notified of the Secretary's approval or disapproval of the zoning ordinances or amendments thereto. If more than 60 days are required, the county will be notified of the expected delay and of the additional time deemed necessary to reach a decision. The Secretary's approval shall remain effective so long as the zoning ordinances or amendments thereto remain in effect as approved.

(2) Development plans pertaining to unimproved property within the Shasta and Clair Engle-Lewiston Units may be submitted by the owner to the Secretary for determination as to whether they conform with approved zoning ordinances and whether the planned use and development would serve the Act. Within 30 days following submission of such plans the Secretary will approve or disapprove the plans or, if more than 30 days are required, will notify the applicant of the expected delay and of the additional time deemed necessary.

(b) *Amendment of ordinances.* Amendments of approved ordinances may be furnished in advance of their adoption to the Secretary for written decision as to their conformance with applicable standards of §§ 292.11 to 292.13.

(c) *Variances or exceptions to application of ordinances.* (1) The Secretary shall be given written notice of any variance granted under, or any exception made to, the application of a zoning ordinance or amendment thereto approved by him.

(2) The County, or private owners of improved property, may submit to the Secretary proposed variances or exceptions to the application of an approved zoning ordinance or amendment thereto for written advice as to whether the intended use will make the property subject to acquisition without the owner's consent. Within 30 days following his receipt of such a request, the Secretary will advise the interested party or parties as to his determination. If more than 30 days are required by the Secretary for such determination, he shall so notify the interested party or parties stating the additional time required and the reasons therefore.

(d) *Certification of property.* Where improvements and land use of improved property conform with approved ordinances, or with approved variances from such ordinances, certification that the Secretary's authority to acquire the property without the owner's consent is suspended may be obtained by any party in interest upon request to the Secretary. Where the development and use of unimproved property for service to the public is approved by the Secretary, certification that the authority to acquire the property without the owner's consent is suspended may be issued to the owner.

(e) *Effect of noncompliance.* Suspension of the Secretary's authority to acquire any improved property without the owner's consent will automatically cease if: (1) Such property is made the subject of variance or exception to any applicable zoning ordinance that does not conform to the applicable standard in the Secretary's regulation, (2) such property is put to a use which does not conform to any applicable zoning ordinance, or, as to property approved by the Secretary for development, a use which does not conform to the approved development plan or (3) the local zoning agency does not have in force a duly adopted, valid zoning ordinance that is approved by the Secretary in accordance with the standards of §§ 292.11 to 292.13.

(f) *Nonconforming commercial or industrial uses.* Any existing commercial or industrial uses not in conformance with approved zoning ordinances shall be discontinued within 10 years from the date such ordinances are approved: *Provided, however,* That with the approval of the Secretary such 10-year period may be extended by the county for a prescribed period sufficient to allow the owner reasonable additional time to amortize investments made in the property before November 8, 1965.

§ 292.13 Standards.

(a) The standards set forth in §§ 292.11-292.13 shall apply to the Shasta and Clair Engle-Lewiston Units, which are defined by the boundary descriptions in the notice of the Secretary of Agriculture of July 12, 1966 (31 FR 9469), and to a strip of land outside the National Recreation Area on either side of Federal Aid Secondary Highway Numbered 1089, as more fully described in 2(a) of the act establishing the recreation area (79 Stat. 1296).

(b) *New industrial or commercial uses.* New industrial or commercial uses will be prohibited in any location except under the following conditions:

(1) The industrial use is such that its operation, physical structures, or waste byproducts would not have significant adverse impacts on surrounding or nearby outdoor recreation, scenic and esthetic values. Industrial uses having an adverse impact include, but are not limited to, cement production, gravel extraction operations involving more than one-fourth acre of surface, smelters, sand, gravel and aggregate processing plants, fabricating plants, pulpmills, and commercial livestock feeder yards.

(2)(i) The commercial use is for purposes of providing food, lodging, automotive or marine maintenance facilities and services to accommodate recreationists and the intended land occupancy and physical structures are such that they can be harmonized with adjacent land development and surrounding appearances in accordance with approved plans and schedules.

(ii) This standard provides for privately owned and operated businesses whose purposes and physical structures are in keeping with objectives for use and maintenance of the area's outdoor recreation resources. It precludes establishment of drive-in theaters, zoos, and similar nonconforming types of commercial entertainment.

(c) *Protection of roadsides.* Provisions to protect natural scenic qualities and maintain screening along public travel routes will include:

(1) Prohibition of new structural improvements or visible utility lines within a strip of land extending back not less than 150 feet from both sides of the centerline of any public road or roadway except roads within subdivisions or commercial areas. In addition to buildings, this prohibition pertains to above-ground power and telephone lines, borrow pits, gravel, or earth extraction areas, and quarries.

(2) Retention of trees and shrubs in the above-prescribed roadside strips to the full extent that is compatible with needs for public safety and road maintenance. Wholesale clearing by chemical or other means for fire control and other purposes will not be practiced under this standard.

(d) *Protection of shorelines.* Provisions to protect scenic qualities and reduce potentials for pollution of public reservoirs will include: Prohibition of structures within 300 feet horizontal distance from highwater lines of reservoirs other than structures the purpose of which is to service and accommodate boating or to facilitate picnicking and swimming: *Provided,* That exceptions to this standard may be made upon showing satisfactory to the Secretary that proposed structures will not conflict with scenic and antipollution considerations.

(e) *Property development.* Location and development of structures will conform with the following minimum standards:

(1) *Commercial development.* (i) Stores, restaurants, garages, service stations, and comparable business enterprises will be situated in centers zoned for this purpose unless they are operated as part of a resort or hotel. Commercial centers will be of sufficient size that expansion of facilities or service areas is not dependent upon use of public land.

(ii) Sites outside designated commercial centers will be used for resort development contingent upon case by case concurrence of the responsible county officials and the Secretary that such use is, in all aspects, compatible with the purposes for establishing the recreation area.

(iii) Structures for commercial purposes, inclusive of isolated resorts or motels, will not exceed two stories height at front elevation, and will be conventional architecture and will utilize colors, nonglare roofing materials, and spacing or layout that harmonizes with forested settings. Except for signs, structures designed primarily for purposes of calling attention to products or service will not be permitted.

(2) *Residential development.* (i) Locations approved for residential development will be buffered by distance, topography, or forest cover from existing or planned public use areas such as trailer parks, campgrounds, or organization sites. Separation will be sufficient to avoid conflicts resulting from intervisibility, noise, and proximity that is conducive to private property trespass.

(ii) Requirements for approval of residential areas will include: (*a*) Construction of access when main access would otherwise be limited to a road constructed by the United States primarily to service publicly owned recreation developments; (*b*) limitation of residences to single-family units situated at a density not exceeding two per acre, but any lot of less than a half-acre may be used for residential purposes if, on or before promulgation of §§ 292.11-292.13, such lot was in separate ownership or was delineated in a county-approved plat that constitutes part of a duly recorded subdivision; (*c*) use of set-backs, limitations to natural terrain, neutral exterior colors, nonglare roofing materials, and limitations of building heights fully adequate to harmonize housing development with the objective of the National Recreation Area as set forth in the act.

(3) *Signs and signing.* Only those signs may be permitted which: (i) Do not exceed 1 square foot in area for any residential use; (ii) do not exceed 40 square feet in area, 8 feet in length, and 15 feet maximum height from ground for any other use, including advertisement of the sale or rental of property; and (iii) which are not illuminated by any neon or flashing device. Commercial signs may be placed only on the property on which the advertised use occurs, or on the property which is advertised for sale or rental. Signs shall be subdued in appearance, harmonizing in design and color with the surroundings and shall not be attached to any tree or shrub. Nonconforming signs may continue for a period not to exceed 2 years from the date a zoning ordinance containing these limitations is adopted.

Subpart C—Sawtooth National Recreation Area—Private Lands

AUTHORITY: Sec. 4(a), Act of Aug. 22, 1972 (86 Stat. 613).

SOURCE: 39 FR 11544, Mar. 29, 1974, unless otherwise noted.

§ 292.14 Introduction.

(a) *Purpose.* In accordance with the provisions of the Act establishing the Sawtooth National Recreation Area (86 Stat. 612), the regulations of this subpart establish standards for the use, subdivision and development of privately owned property within the boundaries of the Sawtooth National Recreation Area. The standards are in furtherance of the preservation and protection of the natural, scenic, historic, pastoral, and fish and wildlife values and to provide for the enhancement of the recreational values of the Recreation Area. Unless, in the judgment of the Secretary, such property is being used, or is in imminent danger of being used, in a manner incompatible with such standards, the property or any interest therein may not be acquired by condemnation. However, private land or an interest therein, determined to be necessary for access to and utilization of public property, and for recreation and other facilities, may be condemned without regard to this restriction, subject however, to the limitation in § 292.15(j).

(b) *Amendment of regulations.* Amendments to these regulations shall be made in accordance with the Administrative Procedures Act (60 Stat. 238, 5 U.S.C. 553), including the publishing of the amendments as a notice of proposed rulemaking with final adoption after interested persons have been given an opportunity to participate in the rulemaking through submission of comments.

(c) *Definitions*—(1) *Cluster-type development.* Planned unit development which allows flexibility in neighborhood and subdivision lot design by dedicating or reserving the land so saved to open space.

(2) *Community development plan.* A narrative plan with maps which sets forth specific standards for desirable development of a community.

(3) *Designated community.* A populated area divided into lots, blocks and streets as platted and recorded in the official records of the county, containing residences and commercial establishments providing goods and services and retaining the atmosphere of a western frontier ranch-type town and so classified in § 292.15(a).

(4) *Dude ranching.* Development oriented to furnish an outdoor recreational or educational experience related to ranching. Facility development is compatible with the pastoral environment, rustic in nature and harmoniously colored.

(5) *Mineral operations.* All functions, work and activities in connection with exploration, development, mining or processing of mineral resources except prospecting which will not cause significant surface distrubance and will not involve removal of more than a reasonable amount of mineral deposit for analysis and study.

(6) *Private property.* Lands or interests in lands not owned by Federal, State, or local governments but not including unpatented mining claims.

(7) *Ranch-type character.* A low profile, rambling, well-proportioned,

rustic appearing, rough-sawn wood or wood and stone structure or group of structures harmoniously situated within a natural environment.

(8) *Residential outbuilding.* Nonhabitable building detached from the residence, such as a garage, woodshed or storage building.

(9) *Secretary.* Secretary of Agriculture.

(10) *Area Ranger.* The Forest Officer having administrative authority for the Sawtooth National Recreation Area.

§ 292.15 General provisions—procedures.

(a) *Classification of private property.* For the purpose of establishing specific standards applicable to the several parcels of private land within the boundaries, such properties are classified and assigned to land use categories as shown on the Land Use Category Map, dated December 15, 1973, as amended July 16, 1976, on file and available for public inspection in the office of the Area Ranger, Sawtooth National Recreation Area, Ketchum, Idaho. The classification of private properties is based on evaluation of scenic, natural, historic, pastoral, wildlife, and other values.

(b) *Land use categories.* Land use categories shown on the map referred to in paragraph (a) of this section are:

(1) *Designated community.* All properties inside a designated community.

(2) *Residential.* Areas for residential development outside designated communities.

(3) *Commercial.* Areas for commercial development outside designated communities.

(4) *Agriculture.* All properties outside designated communities not placed in a residential or commercial land use category.

(5) *Mineral.* Any areas in the land use in paragraphs (b) (1) through (4) of this section, used for mineral operations.

(c) *Changes in classification.* The Secretary may make changes in the classification of private lands set forth in paragraph (a) of this section by incorporating such changes in an amendment of these regulations.

(d) *Certification of compliance with standards*—(1) *Present use.* Any owner of property may request in writing the Area Ranger to examine the present use of the property and issue a certification that such present use conforms to the applicable standards established in § 292.16 for the land use category in which the property is placed. If after examination the Area Ranger determines that the present use of the property does so conform, he will issue a certification to this effect.

(2) *Planned development or change in use.* Any owner of property who proposes to change the use or develop his property for other than agricultural use may submit to the Area Ranger a use or development plan setting forth the manner in which and the time by which the property is to be developed and the use to which the property is to be put. If the Area Ranger determines that the development and use plan conforms to the applicable standards established in § 292.16 for the land use category in which the property is placed, he will issue a certification to this effect.

(3) *Notification of action.* Within 45 days after receipt of request for certification, the Area Ranger shall:

(i) Issue the certification.

(ii) Notify applicant that additional information is needed before action can be taken on the application.

(iii) Notify applicant that certification is denied, and reasons for denial.

(iv) Notify applicant that action on the request is deferred for a specified period of time for stated reasons.

(e) *Qualified certifications.* (1) Any owner of a property classified residential or commercial under paragraph (a) of this section which had been improved and was being used for residential or commercial purposes on the effective date of these regulations, but which does not conform to the standards established for properties in the land use category in which the property is placed may nevertheless be issued a certification for period not to exceed 10 years so that the improvements may be made to conform to the standards. Such certification shall specify that it is only effective so long as the property is not subdivided, and is not further improved and the improvements existing on the effective date of these regulations, are not reconstructed, altered or relocated, except to meet standards. The certification shall specify the date on which it shall terminate.

(2) If the Area Ranger determines, prior to certification, that a part or all of a property, for which a request for certification is made, is needed for access to and utilization of public property or for recreation and other facilities, he may except from the certification that part of the property needed for these purposes.

(f) *Revocation of certification.* The Area Ranger will revoke a certification when he finds that the property is being used or developed not in conformance with the terms of the certification or the applicable standards established in § 292.16 or is in imminent danger of being so used or developed. Notice of such revocation will be in writing and delivered to the owner in person or by certified mail. A partial revocation may be made when a portion of a property covered by a certification is determined to be needed for access to and utilization of public property or for recreation and other facilities.

(g) *Effect of certification.* Property for which a certification is held by the owner shall not be acquired by the Secretary by condemnation.

(h) *Effect of noncompliance with standards.* Property for which a determination has been made that it is being used or developed not in conformance with the applicable standards established in § 292.16 for the land use category in which the property is placed may be acquired by the Secretary by condemnation.

(i) *Acquisition by negotiated purchase.* (1) Any privately owned land or interest in land determined by the Secretary to be needed in furtherance of the objectives and purposes for which the Sawtooth National Recreation Area was established may be acquired by negotiated purchase subject only to the limitation in paragraph (j) of this section.

(2) Property which has been developed for use prior to the effective date of these regulations, but which is not in conformance with applicable standards may be acquired by the Secretary through negotiated purchase and the Secretary may permit the owners, their successors or assigns to retain a right of use and occupancy of the improved property for a definite term not beyond December 31, 1988.

(j) *Limitation on acquisitions.* Acquisitions of lands or interests therein for access to and utilization of public property and for recreation and other facilities shall not exceed 5 percent of the total acreage of all private property within the Sawtooth National Recreation Area on August 22, 1972. A land acquisition plan shall be prepared by the Area Ranger and approved by the Regional Forester showing those properties needed for access to and utilization of public property or for recreation and other facilities. Said plan may be revised from time to time upon approval by the Regional Forester. Said plan shall be available for inspection by the public in the office of the Area Ranger.

(k) *Land exchanges.* Some parcels of Federal lands within the Sawtooth National Recreation Area are classified or may be subsequently classified in the overall general plan for the Recreation Area as suitable for selection through land exchange. Using existing land exchange authorities, these Federal lands may be made available for selection by parties owning land within the boundaries of the National Recreation Area to resolve some existing or potential land use conflicts. The values of the properties so exchanged shall be approximately equal, or, if they are not approximately equal, they shall be equalized by the payment of cash. Federal lands which may be located within the boundaries of designated communities will be considered for exchange only after acceptable community development plans and ordinances have been implemented.

(l) *Appeals.* Any landowner who is adversely affected by a decision of the Area Ranger under these regulations may file an appeal under the provisions of 36 CFR Part 251, Subpart C.

(m) *Judicial review.* The United States District Court for the District of Idaho shall have jurisdiction to review these regulations upon a compliant filed within 6 months after the effective date of these regulations, by any affected landowner in an action for a declaratory judgment as provided in the Act of August 22, 1972 (86 Stat. 612), section 4(a).

[39 FR 11544, Mar. 29, 1974, as amended at 41 FR 29379, July 16, 1976; 54 FR 3368, Jan. 23, 1989]

§ 292.16 Standards.

The standards established in these regulations are in furtherance of the preservation and protection of the natural, scenic, historic, pastoral, and fish and wildlife values and to provide for the enhancement of the recreation values of the Recreation Area.

(a) *Applicability.* The standards set forth in this section for each land use category shall apply to the private land in each such land use category as classified by the Secretary in accordance with § 292.15.

(b) *Changes in standards.* Changes in and addition to the standards may be made from time to time through amendment of these regulations.

(c) *General standards.* The following standards apply to properties in all land use categories.

(1) Use and development of the property will be in conformance with applicable Federal, State, and local laws, regulations and ordinances.

(2) Development, improvement and use of the property will not materially detract from the scenic, natural, historic, pastoral, and fish and wildlife values of the area.

(3) There will be adequate provision for disposal of solid and liquid waste originating on or resulting from use of the property.

(4) All new utilities will be underground.

(5) No structures or other improvements will be constructed in or encroaching upon streambeds, banks and flood plains of live or intermittent streams. Streambeds, banks, and flood plains will not be disturbed, except as may be necessary to construct, operate, and maintain irrigation, fisheries, utilities, roads, and similar facilities or improvements. Any such necessary encroachment will avoid impeding water flow, sedimentation of streams or entrance of deleterious material into streams.

(d) *Designated communities.* (1) The following standards are established until replaced as provided for in paragraph (d)(2) of this section.

(i) No buildings or structures, or part thereof, erected, constructed, reconstructed, altered, moved, or used for any purpose, except in conformance with the standards established herein.

(ii) No excavation or topographic change, except that required for foundations, utilities, or roads, that would modify or change the scenic beauty of natural hillsides or mountain slope lands.

(iii) Minimum 100-foot frontage on new building sites.

(iv) All new buildings set in 10 feet from each side of property line.

(v) All new buildings set back 20 feet from front property line.

(vi) Only one single-family dwelling for each building site or lot.

(vii) No new building to exceed two stories in height as determined from ground level.

(viii) No building or structure erected with foundation pillars or stilts that exceeds 36 inches above ground level. Pillars or stilts, if used, must be enclosed.

(ix) Minimum of 750 square feet for new residences.

(x) All new buildings constructed of logs, shakes, rough lumber, rough wood, and native stone.

(xi) Mobile or semimobile homes permitted only in existing mobile home parks.

(xii) Nonreflective roofs on new buildings.

(xiii) All new steps and walks constructed of wood.

(xiv) Paints or stains to be of earth tones common to the area.

(xv) All buildings and structures, including fences, to be maintained in a useable and servicable condition or removed. Properties to be maintained in a clean and orderly condition.

(xvi) Existing plus new buildings or structures cannot occupy more than 30 percent of the land surface on a lot less than 20,000 square feet in area. On any lot larger than 20,000 square feet, existing plus new buildings cannot occupy more than 6,500 square feet. Existing properties exceeding this amount as of the effective date of these regulations may not be further developed.

(xvii) The standards in paragraphs (d)(1) (v), (vi), (ix), and (xvi) of this section shall not apply to properties developed for commercial purposes.

(2) The Area Ranger shall cooperate with each designated community in the preparation of a community development plan and implementing ordinances which will assure that use and development of the private properties within the community will be consistent with the purposes for which the Sawtooth National Recreation Area was established and with the overall general plan of the Recreation Area. The Secretary may then, by amendment of these regulations, replace the standards adopted pursuant to paragraph (d)(1) of this section with the standards set forth in such community development plan and implementing ordinances as the standards applicable to that designated community.

(e) *Residential.* (1) Vegetative cover and screening requirements. Any combination of vegetative screening, topography, and structure design that renders the residence inconspicuous and not obtrusive as seen from main travel routes.

(2) *Buildings.* (i) Not more than one residence on each separately owned contiguous property as recorded in the records of the appropriate county on date of publication of these regulations.

(ii) Not more than two outbuildings with each residence. Aggregate square foot area of outbuildings not to exceed 400 square feet.

(iii) Dwelling size not less than 750 square feet of floor space.

(iv) Building architecture compatible with location and the pastoral environment, rustic in nature, harmoniously colored or natural wood finish or suitable wood substitutes, nonreflective roofs and sidings.

(v) Height of buildings to be in keeping with site characteristics and normally not exceeding on-site tree height, or 30 feet.

(vi) Sufficient setback of buildings from centerline of public roads for safety and unhampered traffic flow.

(vii) Minimum building setback from property line—10 feet.

(3) No excavation or topographic change except that required for buildings, roads, and utilities.

(4) Removal of live trees and other vegetation limited to that necessary to accommodate buildings and roads to allow installation of utilities.

(5) Roads designed, located, and constructed to minimize adverse esthetic impact and soil erosion.

(6) Owner identification and sale or rental signs not to exceed 2 square feet in size.

(7) Buildings and structures, including fences, to be maintained in a usable and serviceable condition or removed.

(8) No further reduction in size of residential ownerships except that which will not impair the objectives for which the Sawtooth National Recreation Area was established. A certification will be issued pursuant to § 292.15(d) upon application in such cases.

(f) *Commercial*—(1) General. Service provided must serve a need which cannot readily or adequately be provided in a designated community, and must be compatible with the purposes for which the Sawtooth National Recreation Area was established.

(2) *Buildings.* (i) Building architecture to be compatible with the pastoral environment, rustic in nature, harmoniously colored or natural wood finish or suitable wood substitutes, nonreflective roofs and sidings.

(ii) Building height to be in keeping with building size, scale, setback from roads and property boundaries, site size, setting, building design and type of use.

(iii) Sufficient setback of buildings from centerline of public roads for safety and unhampered traffic flow.

(3) Only signs identifying the commercial enterprise being conducted on the property. Signs not to exceed 20 square feet in area, 6 feet in length and 15 feet maximum height. Signs to be subdued in appearance and harmonizing in design and color with the surroundings. Signs not complying with the standard may be approved by certifications issued pursuant to § 292.15(d) in special cases.

(4) No flashing lights.

(5) No new mobile or semimobile homes and mobile home parks except where they may be located without substantially impairing or detracting from the scenic, natural, historic, pastoral, and fish and wildlife values of the area.

(g) *Agriculture*. (1) Only structures which do not substantially impair or detract from the scenic, natural, historic, pastoral, and fish and wildlife values of the area and which are necessary for ranching or dude ranching such as dwellings, barns, storage buildings, fences, corrals, irrigation facilities, roads, and utilities.

(2) Buildings to be ranch-type character with log or other rustic exterior with harmoniously colored or natural wood finish and nonreflective surfaces.

(3) Fences and other improvements to be in harmony with the western ranching atmosphere.

(4) Minimum setback of new buildings to be 150 feet from public roads where determined feasible by the Area Ranger.

(5) No further reduction in size of agricultural ownerships except that which will not impair the objectives for which the Sawtooth National Recreation Area was established. A certification will be issued pursuant to § 292.15(d) upon application in such cases.

(6) No signs, billboards or advertising devices except a property identification sign and one sale or rental sign not to exceed 2 square feet in area, harmonious in design and color with the surroundings. Signs not complying with this standard may be approved by certifications issued pursuant to § 292.15(d) in special cases.

(7) Any tree removal and related slash disposal and soil erosion prevention measures to be conducted in a manner that will minimize detrimental effects to the site and adjoining lands.

(8) The general topography of the landscape to be unaltered except for incidental excavation or topographic change required by ranching activities.

(9) Structures and improvements, including fences, to be maintained in usable condition or removed. Those recognized as having historic or esthetic value may remain.

(10) Roads to be designed, located and constructed to minimize esthetic impact and soil movement.

(11) Agricultural practices to be limited to hay production and pasture and range grazing in a manner which does not degrade water quality or result in accelerated soil erosion.

(h) *Mineral operations*. The standards set forth in this paragraph shall apply to a private property or portion thereof in any land use category which is used for mineral operations. To aid in determining whether a planned mineral operation will conform to these standards, the owner of the property shall submit to the Area Ranger a proposed plan of operations. If the Area Ranger determines that the proposed operation conforms to the standards established herein he will approve the plan and such approval shall constitute the certification provided for in § 292.15(d).

(1) Operations will be confined to those locations where they may be conducted without substantially impairing or detracting from the scenic, natural, historic, pastoral, and fish and wildlife values of the area.

(2) The general standards set forth in paragraph (c) of this section shall apply to any mineral operations.

(3) The operations as described in the plan of operation and as they are carried out in accordance with the plan shall:

(i) Comply with Federal and State air and water quality and waste disposal standards.

(ii) Minimize adverse impacts on scenic values.

(iii) Provide for prompt stabilization and restoration of areas disturbed by the operations.

Subpart D—Sawtooth National Recreation Area—Federal Lands

AUTHORITY: Sec. 1, 30 Stat. 35, 36, as amended, 16 U.S.C. 478, 551; sec. 11, 86 Stat. 612, 16 U.S.C. 460aa-10.

SOURCE: 42 FR 39387, Aug. 4, 1977, unless otherwise noted.

§ 292.17 General provisions.

(a) The use, management and utilization of natural resources on the Federal lands in the Sawtooth National Recreation Area (SNRA) are subject to the General Management Plan and the laws, rules, and regulations pertaining to the National Forests with the exception that part 252 of this chapter does not apply to these resources. No use or disposal of such resources shall be authorized which will result in substantial impairment of the natural values of the Recreation Area.

(b) *Definitions*: (1) *Act* means Pub. L. 92-400 (86 Stat. 612), which established the SNRA.

(2) *Area Ranger or Superintendent* means the Forest Service officer having administrative authority for the SNRA.

(3) *General management plan* means the document setting forth the land allocation and resource decisions for management of the SNRA.

(4) *Letter of authorization* means a letter signed by the Area Ranger, or his designee, authorizing an operator to conduct operations as approved in the operating plan.

(5) *Mineral resources* means all locatable minerals.

(6) *Operator* means a person conducting or proposing to conduct operations.

(7) *Operations* means all functions works, and activities in connection with exploration, development, mining or processing of mineral resources and all uses reasonably incident thereto, including roads and other means of access on lands, regardless of whether said operations take place on or off mining claims.

(8) *Operating plan* means a written instrument describing proposed operations on Federal lands and containing such information as required by § 292.18.

(9) *Person* means any individual, partnership, association, corporation, or other legal entity.

(10) *Substantial impairment* means that level of disturbance of the values of the SNRA which is incompatible with the standards of the General Management Plan. The proposed activities will be evaluated as to: (i) The period of impact, (ii) the area affected, and (iii) the importance of the impact on the SNRA values.

(11) *Unpatented mining claims* means any mining claim or millsite claim located prior to August 22, 1972, pursuant to the Mining Law of 1872, but not patented.

§ 292.18 Mineral resources.

(a) *Occupancy*. No unpatented mining claim may be used or occupied, except as otherwise permitted for any purpose other than exploration, mining, or processing operations and uses reasonably incident thereto.

(b) *Letter of authorization*. A letter of authorization with the posting of an appropriate bond is required prior to conducting operations in the SNRA.

(c) *Operating plan*. A proposed operating plan must be filed with the Area Ranger prior to conductng any operations and prior to construction, reconstruction, improvement or maintenance of roads and trails, bridges, or other facilities for access within the SNRA; provided, that an operating plan is not required for (1) operations which only involve vehicular travel on existing roads open to public use; (2) marking and/or reestablishing claims corners; (3) sampling and exploration work which will not cause significant damage to surface resources and will not involve the removal of more than 100 pounds of material for analysis and study, provided the Area Ranger has prior notice of such activities; or (4) the evaluation and study of existing underground mine workings not involving surface disturbances.

(d) *Operating plan—requirements*. Each operating plan shall include:

(1) The names and mailing addresses of operators and their agents, along with a statement of owenership and/or authorization under which the operation is to be conducted, and including a copy of the location notice(s), proof of assessment labor, and quit claim deeds if ownership has changed within the assessment year.

(2) A map or sketch showing information sufficient to locate the proposed area of operations on the ground, existing and/or proposed roads or access routes to be used in connection with the operations and the approximate location and size of

areas where surface resources will be disturbed.

(3) Information describing the nature of operations proposed and how they will be conducted, the type and standard of existing and proposed roads or access routes, the means of transportaion to be used, the period during which the proposed operations will take place, and measures to be taken for protecting the values of the SNRA and reclaiming the lands.

(e) *Operating plan—approval.* (1) The Area Ranger shall promptly acknowledge receipt of any operating plan to the operator. The Area Ranger shall review the environmental effects and conduct a technical examination of each proposed operating plan. The technical examination shall identify the resources and the land uses in the area of operations. The Area Ranger shall use the current General Management Plan of the SNRA and the Final Environmental Statement as guides in determining whether the proposed operations may result in substantial impairment of the values of the SNRA. In his review, the Area Ranger may solicit comments from the general public and/or other government agencies in analysis of environmental effects. In his review, the Area Ranger will consider the compatibility of the proposed operating plan with the Act and the General Management Plan. The Area Ranger may not approve an operating plan for an identical claimed area to more than one operator.

(2) Within 30 working days of receipt of a proposed operating plan, the Area Ranger shall take one of the following actions:

(i) Notify the operator that the operating plan has been approved as submitted; or,

(ii) Notify the operator that the operating plan has been approved as subject to the operator accepting the changes or conditions deemed necessary by the Area Ranger; or,

(iii) Notify the operator that more time is necessary to review the plan because of the need to prepare an environmental impact statement, or conduct a cultural resource survey, or other stated reasons; in such cases, the operator will be notified of the approximate time needed to complete the review; or,

(iv) Notify the operator of an apparent conflict of ownership and that additional proof of ownership is required; or,

(v) Notify the operator that the operating plan as submitted is inadequate to support any conclusion as to substantial impairment, and that additional information will be required; or,

(vi) Notify the operator that the operating plan is not approved since such operations as specified in the plan would create substantial impairment.

(f) *Operating plans—suspension or modification.* The Area Ranger may suspend or terminate authorization to operate in whole or in part where such operations are causing substantial impairment which cannot be mitigated. At any time during operations under an approved operation plan, the operator may be required to modify the operating plan in order to minimize or avoid substantial impairment of the values of the SNRA.

(g) *Bond requirements.* (1) An operator shall furnish a bond, in the amount determined by the Area Ranger to be appropriate for reclamation of the disturbed surface area, prior to the commencement of operations. In lieu of a bond, the operator may deposit into a Federal depository, as directed by the Forest Service, cash in an amount equal to the required dollar amount of the bond or negotiable securities of the United States having market value at the time of deposit or not less than the required dollar amount of the bond.

(2) When the reclamation of the project, or portions thereof, has been completed, the operator will notify the Area Ranger who will examine the area to determine whether the reclamation is acceptable. When the Area Ranger has accepted as completed any portion of the reclamation, he shall reduce proportionately the amount of bond thereafter to be required with respect to the remaining reclamation. However, the operator will not be released from liability under the bond for the amount which may be necessary to revegetate each planting area for a minimum period of at least 5 years after the first efforts at revege-

tation if those initial efforts are unsuccessful.

(3) If the Area Ranger determines that revegetation is likely to occur before the expiration of such minimum period, he may release the operator from the extended liability under the bond for revegetation of planting area.

(h) *Access.* The operator shall permit free and unrestricted public access to and through lands included within an unpatented mining claim for all lawful and proper purposes. In areas where such access would unduly interfere with authorized operations or would constitute a hazard to public health and safety, public use may be restricted with prior approval of the Area Ranger.

Subpart E—[Reserved]

Subpart F—Hells Canyon National Recreation Area

AUTHORITY: Sec. 10, Pub. L. 94-199 (16 U.S.C. 460gg-7); 16 U.S.C. 551; 16 U.S.C. 1281(d).

SOURCE: 54 FR 41092, Oct. 5, 1989 (interim), unless otherwise noted.

§ 292.40 Purpose and scope.

(a) The rules of this subpart govern management of the National Forest System lands that comprise the Hells Canyon National Recreation Area located in the Wallowa-Whitman, Nezperce, Payette National Forests in the States of Idaho and Oregon as established by the Act of December 31, 1975, as amended (89 Stat. 1117; 16 U.S.C. 460gg).

(b) Other rules of this chapter that govern management of National Forest System lands and resources, as well as direction issued through the Forest Service Manual and Handbooks (36 CFR part 200), also apply to management of the Recreation Area. Specifically, the resources of the Recreation Area shall be managed in accordance with the rules of this title, including, but limited to:

(1) 36 CFR part 212—Administration of the Forest Development Transportation system.

(2) 36 CFR part 219—Planning.

(3) 36 CFR part 222—Range Management.

(4) 36 CFR part 223—Sales and disposal of National Forest System Timber.

(5) 36 CFR part 228—Minerals.

(6) 36 CFR part 241—Wildlife.

(7) 36 CFR part 293—Wilderness-Primitive Areas.

(8) 36 CFR part 297—Wild and Scenic Rivers.

(9) 36 CFR part 296—Protection of Archaeological Resources: Uniform Regulations.

(10) 36 CFR part 800—Protection of Historic and Cultural Properties

(c) In the event of conflict or inconsistency between rules of this subpart and other rules within this title, the rules of this subpart shall take precedence to the extent permitted by law.

§ 292.41 Definitions.

Act means the Act of December 31, 1975, as amended (89 Stat. 1117) which established the Hells Canyon National Recreation Area.

Area Ranger is the Forest Service line officer given administrative responsibility for the Hells Canyon National Recreation Area. The Area Ranger reports to the Forest Supervisor of the Wallowa-Whitman National Forest.

Clearcutting is an even-aged cutting method in which the entire standing crop of trees from an area is removed at one time.

Group selection is an uneven-aged cutting method in which small groups of trees, usually no more than 2 acres in size, are removed to meet a predetermined goal of size distribution and species in the remaining stand.

Intermediate cutting is a cutting which removes trees from a stand between the time of its formation and the regeneration cut.

Individual tree selection is an uneven-aged cutting method in which selected trees from specified size or age classes are removed over the entire stand area to meet a predetermined goal of size or age distribution and species composition in the remaining stand.

Plan means the Comprehensive Management Plan for the Hells Canyon National Recreation Area.

Recreation area means the Hells Canyon National Recreation Area.

Salvage cutting is an intermediate cutting made to remove trees that are dead or in imminent danger of being killed by injurious agents.

Sanitation cutting is an intermediate cutting made to remove dead, damaged, or susceptible trees to prevent the spread of pests or pathogens.

Selection cutting is an uneven-aged cutting method which entails the annual or periodic removal of trees individually or in small groups.

§ 292.42 Comprehensive Management Plans.

(a) The Forest Supervisor of the Wallowa-Whitman National Forest shall prepare a Comprehensive Management Plan to guide management of the Recreation Area.

(b) The Plan shall provide broad direction for administration of the area for public outdoor recreation in a manner compatible with the following objectives:

(1) The maintenance and protection of the free-flowing nature of the rivers within the recreation area;

(2) Conservation of scenic, wilderness, cultural, scientific, and other values contributing to the public benefit;

(3) Preservation, especially in the area generally known as Hells Canyon, of all features and peculiarities believed to be biologically unique including, but not limited to, rare and endemic plant species, rare combinations of aquatic, terrestrial, and atmospheric habitats, and rare combinations of outstanding and diverse ecosystems and parts of ecosystems associated therewith;

(4) Protection and maintenance of fish and wildlife habitat;

(5) Protection of archaeological and paleontological sites and interpretation of these sites for the public benefit and knowledge insofar as it is compatible with protection;

(6) Preservation and restoration of historic sites associated with and typifying the economic and social history of the region and the American West; and

(7) Management, utilization, and disposal of natural resources on federally owned lands, including, but not limited to timber harvesting by selection cutting, mining, and grazing and the continuation of such existing uses and developments to the extent that such uses are compatible with the provisions of the Act.

(c) The Plan shall establish the array, levels, and manner of resource use within the Recreation Area. Management direction and practices identified in the Plan shall be consistent with the standards and guidelines set forth in § 292.43 of this subpart.

(d) The Plan adopted May 23, 1981, shall continue to guide management of the area and shall be incorporated as part of the Wallowa-Whitman National Forest Land and Resource Management Plan. Any revision or amendments to the Plan shall be carried out in accordance with the rules of 36 CFR part 219.

§ 292.43 Management standards and guidelines.

The Recreation Area shall be managed in accordance with the following standards for the preservation and protection of the natural, scenic, historic, pastoral, timber, fish, and wildlife values and enhancement of the recreation values of the area:

(a) *Cultural resources.* Historic, archaeological and paleontological resources of the area shall be preserved and protected by:

(1) Developing and maintaining inventories of these resources;

(2) Recommending areas deemed suitable for listing with the National Register of Historic Places;

(3) Monitoring and protecting known cultural resources from vandalism;

(4) Conducting or authorizing archaeological, paleontological, and historic research; and

(5) Stabilizing, maintaining, and/or restoring important historic sites.

(b) *Use and managmeent of roads and trails.* Adequate and safe access to identified recreational and other sites shall be provided for the enjoyment of the public. Existing roads and trails may be upgraded and improved as necessary to ensure public safety and prevent unacceptable resource damage. Alternative transportation routes may be developed to meet identified resource management objectives in the Comprehensive Management Plan. Consistent with the rules at 36 CFR parts 212, 261, and 293, the Area Ranger shall establish such control on use and types of motorized vehicles and mechanical equipment as is necessary to meet the requirements of the Act, applicable regulations, and the management direction in the Plan.

(c) *Use and number of rivercraft.* The use, type, and number of rivercraft on rivers within the Recreation Area shall be regulated through the management direction established in the Plan and other applicable rules of this chapter. The Plan shall address seasons of use and opportunities for outfitter and guide services.

(d) *Timber management.* (1) The timber resources within the Recreation Area shall be managed to perpetuate healthy stands of diverse tree species and size and age classes and to emphasize stand condition, scenery, wildlife habitat, and recreation needs, except as provided for in (d)(2) of this section. Timber harvesting for utilization and disposal of forest products shall be by selection cutting methods. Permitted silvicultural treatments generally shall be limited to individual tree selection, group selection, sanitation, salvage, and intermediate cuttings.

(2) Where timber has been damaged by fire, insect, disease, or wind, clearcutting is permitted where its use would mitigate the situation.

(e) *Mining.* Subject to valid existing rights as of December 31, 1975, the Recreation Area is withdrawn from location, entry, or patent of minerals under the federal mining laws. Valid mining activity existing as of December 31, 1975, may continue under regulation at 36 CFR part 228. Insofar as practicable, permissible mining activities shall be regulated to assure that they are conducted in a manner which will best assure the purposes for which the Recreation Area was established.

(f) *Range management.* Ranching and grazing in existance on December 31, 1975 are traditional and valid uses of the Recreation Area. Consistent with these uses, range resources in the Recreation Area shall be managed in accordance with existing regulations at 36 CFR parts 219.20 and 222 in a manner compatible with the purposes for which the area was established and administered as defined in section 7 of the Act.

(g) *Wildlife and fisheries.* (1) Management of wildlife and fisheries resources within the Recreation Area shall:

(i) Maintain or enhance wildlife habitat for non-game and game species by emphasizing diversity of habitat;

(ii) Enhance opportunities for threatened and endangered species to survive and increase in numbers; and,

(iii) Provide for public enjoyment and for protection of wildlife.

(2) As provided by section 12 of the Act (16 U.S.C. 460gg-9), the Forest Supervisor may designate zones where, and establish periods when, no hunting or fishing shall be permitted for reasons of public safety, administration of the area, or public use and enjoyment.

(h) *Other resources.* The Plan shall establish management direction and standards for wilderness, soil and water, wild and scenic rivers, developed recreation, and other values and resources of the Recreation Area consistent with the Act and other applicable laws, orders, and regulation.

PART 293—WILDERNESS—PRIMITIVE AREAS

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293.17 National Forest Primitive Areas.

AUTHORITY: Sec. 4-6, 92 Stat. 1650, as amended (16 U.S.C. 113-136); 74 Stat 215 (16 U.S.C. 528-531); 46 Stat 1020 (16 U.S.C. 577-577c).

SOURCE: 38 FR 5855, Mar. 5, 1973, unless otherwise noted.

§ 293.1 Definition.

National Forest Wilderness shall consist of those units of the National Wilderness Preservation System which at least 30 days before the Wilderness Act of September 3, 1964, were designated as Wilderness and Wild under Secretary of Agriculture's Regulations U-1 and U-2 (§§ 251.20, 251.21), the Boundary Waters Canoe Area as designated under Regulation U-3 (§ 294.1), and such other areas of the National Forests as may later be added to the System by act of Congress. Sections 293.1 to 293.15 apply to all National Forest units now or hereafter in the National Wilderness Preservation System, including the Boundary Waters Canoe Area, Superior National Forest, except as that area is subject to § 293.16.

§ 293.2 Objectives.

Except as otherwise provided in the regulations in this part, National Forest Wilderness shall be so administered as to meet the public purposes of recreational, scenic, scientific, educational, conservation, and historical uses; and it shall also be administered for such other purposes for which it may have been established in such a manner as to preserve and protect its wilderness character. In carrying out such purposes, National Forest Wilderness resources shall be managed to promote, perpetuate, and, where necessary, restore the wilderness character of the land and its specific values of solitude, physical and mental challenge, scientific study, inspiration, and primitive recreation. To that end:

(a) Natural ecological succession will be allowed to operate freely to the extent feasible.

(b) Wilderness will be made available for human use to the optimum extent consistent with the maintenance of primitive conditions.

(c) In resolving conflicts in resource use, wilderness values will be dominant to the extent not limited by the Wilderness Act, subsequent establishing legislatiion, or the regulations in this part.

§ 293.3 Control of uses.

(a) To the extent not limited by the Wilderness Act, subsequent legislation establishing a particular unit, or the regulations in this part, the Chief, Forest Service, may prescribe measures necessary to control fire, insects, and disease and measures which may be used in emergencies involving the health and safety of persons or damage to property and may require permits for, or otherwise limit or regulate, any use of National Forest land, including, but not limited to, camping, campfires, and grazing of recreation livestock.

(b) For all prohibitions in National Forest Wildernesses, see part 261 of this chapter.

[38 FR 5855, Mar. 5, 1973, as amended at 42 FR 35959, July 13, 1977]

§ 293.4 Maintenance of records.

The Chief, Forest Service, in accordance with section 3(a)(2) of the Wilderness Act, shall establish uniform procedures and standards for the maintenance and availability to the public of records pertaining to National Forest Wilderness, including maps and legal descriptions; copies of regulations governing Wilderness; and copies of public notices and reports submitted to Congress regarding pending additions, eliminations, or modifications. Copies of such information pertaining to National Forest Wilderness within their respective jurisdictions shall be available to the public in the appropriate offices of the Regional Foresters, Forest Supervisors, and Forest Rangers.

§ 293.5 Establishment, modification, or elimination.

National Forest Wilderness will be established, modified, or eliminated in accordance with the provisions of sections 3(b), (d), and (e) of the Wilderness Act. The Chief, Forest Service, shall arrange for issuing public notices, appointing hearing officers, holding public hearings, and notifying the Governors of the States concerned and the governing board of each county in which the lands involved are located.

(a) At least 30 days' public notice shall be given of the proposed action and intent to hold a public hearing. Public notice shall include publication in the FEDERAL REGISTER and in a newspaper of general circulation in the vicinity of the land involved.

(b) Public hearings shall be held at locations convenient to the area affected. If the land involved is in more than one State, at least one hearing shall be held in each State in which a portion of the land lies.

(c) A record of the public hearing and the views submitted subsequent to public notice and prior to the close of the public hearing shall be included with any recommendations to the President and to the Congress with respect to any such action.

(d) At least 30 days before the date of the public hearing, suitable advice shall be furnished to the Governor of each State and the governing board of each county or, in Alaska, the borough in which the lands are located, and Federal departments and agencies concerned; and such officers or Federal agencies shall be invited to submit their views on the proposed action at the hearing or in writing by not later than 30 days following the date of the hearing. Any views submitted in response to such advice with respect to any proposed Wilderness action shall be included with any recommendations to the President and to the Congress with respect to any such action.

§ 293.6 Commercial enterprises, roads, motor vehicles, motorized equipment, motorboats, aircraft, aircraft landing facilities, airdrops, structures, and cutting of trees.

Except as provided in the Wilderness Act, subsequent legislation establishing a particular Wilderness unit, or §§ 294.2(b), 294.2(c), and 294.2(e), paragraphs (c) and (d) of this section, and §§ 293.7, 293.8, and 293.12 through 293.16, inclusive, and subject to existing rights, there shall be in National Forest Wilderness no commercial enterprises; no temporary or permanent roads; no aircraft landing strips; no heliports or helispots, no use of motor vehicles, motorized equipment, motorboats, or other forms of mechanical transport; no landing of aircraft; no dropping of materials, supplies, or persons from aircraft; no structures or installations; and no cutting of trees for nonwilderness purposes.

(a) *Mechanical transport*, as herein used, shall include any contrivance which travels over ground, snow, or water on wheels, tracks, skids, or by floatation and is propelled by a nonliving power source contained or carried on or within the device.

(b) *Motorized equipment*, as herein used, shall include any machine activated by a nonliving power source, except that small battery-powered, hand-carried devices such as flashlights, shavers, and Geiger counters are not classed as motorized equipment.

(c) The Chief, Forest Service, may authorize occupancy and use of National Forest land by officers, employees, agencies, or agents of the Federal, State, and county governments to carry out the purposes of the Wilderness Act and will prescribe conditions under which motorized equipment, mechanical transport, aircraft, aircraft landing strips, heliports, helispots, installations, or structures may be used, transported, or installed by the Forest Service and its agents and by other Federal, State, or county agencies or their agents, to meet the minimum requirements for authorized activities to protect and administer the Wilderness and its resources. The Chief may also prescribe the conditions under which such equipment, transport, aircraft, installations, or structures may be used in emergencies involving the health and safety of persons, damage to property, or other purposes.

(d) The Chief, Forest Service, may permit, subject to such restrictions as he deems desirable, the landing of aircraft and the use of motorboats at places within any Wilderness where these uses were established prior to the date the Wilderness was designated by Congress as a unit of the National Wilderness Preservation System. The Chief may also permit the maintenance of aircraft landing strips, heliports, or helispots which existed when the Wilderness was designated by Congress as a unit of the National Wilderness Preservation System.

§ 293.7 Grazing of livestock.

(a) The grazing of livestock, where such use was established before the date of legislation which includes an area in the National Wilderness Preservation System, shall be permitted to continue under the general regulations covering grazing of livestock on the National Forests and in accordance with special provisions covering grazing use in units of National Forest Wilderness which the Chief of the Forest Service may prescribe for general application in such units or may arrange to have prescribed for individual units.

(b) The Chief, Forest Service, may permit, subject to such conditions as he deems necessary, the maintenance, reconstruction, or relocation of those livestock management improvements and structures which existed within a Wilderness when it was incorporated into the National Wilderness Preservation System. Additional improvements or structures may be built when necessary to protect wilderness value.

§ 293.8 Permanent structures and commercial services.

Motels, summer homes, stores, resorts, organization camps, hunting and fishing lodges, electronic installations, and similar structures and uses are prohibited in National Forest Wilderness. The Chief, Forest Service, may permit temporary structures and commercial services within National Forest Wilderness to the extent necessary for realizing the recreational or other wilderness purposes, which may include, but are not limited to, the public services generally offered by packers, outfitters, and guides.

§ 293.9 [Reserved]

§ 293.10 Jurisdiction over wildlife and fish.

Nothing in the regulations in this part shall be construed as affecting the jurisdiction or responsibility of the several States with respect to wildlife and fish in the National Forests.

§ 293.11 Water rights.

Nothing in the regulations in this part constitutes an expressed or implied claim or denial on the part of the Department of Agriculture as to exemption from State water laws.

§ 293.12 Access to surrounded State and private lands.

States or persons, and their successors in interest, who own land completely surrounded by National Forest Wilderness shall be given such rights as may be necessary to assure adequate access to that land. *Adequate access* is defined as the combination of routes and modes of travel which will, as determined by the Forest Service, cause the least lasting impact on the primitive character of the land and at the same time will serve the reasonable purposes for which the State and private land is held or used. Access by routes or modes of travel not available to the general public under the regulations in this part shall be given by written authorization issued by the Forest Service. The authorization will prescribe the means and the routes of travel to and from the privately owned or State-owned land which constitute adequate access and the conditions reasonably necessary to preserve the National Forest Wilderness.

§ 293.13 Access to valid occupancies.

Persons with valid occupancies wholly within National Forest Wilderness shall be permitted access to such surrounded occupancies by means consistent with the preservation of National Forest Wilderness which have been or are being customarily used with respect to other such occupancies surrounded by National Forest Wilderness. The Forest Service will, when appropriate, issue permits which shall prescribe the routes of travel to and from the surrounded occupancies, the mode of travel, and other conditions reasonably necessary to preserve the National Forest Wilderness.

[39 FR 31321, Aug. 28, 1974]

§ 293.14 Mineral leases and mineral permits.

(a) All laws pertaining to mineral leasing shall extend to each National Forest Wilderness for the period specified in the Wilderness Act or subsequent establishing legislation to the same extent they were applicable prior to the date the Wilderness was designated by Congress as a part of the National Wilderness Preservation System. No person shall have any right or interest in or to any mineral deposits which may be discovered through prospecting or other information-gathering activity after the legal date on which the laws pertaining to mineral leasing cease to apply to the specific Wilderness, nor shall any person after such date have any preference in applying for a mineral lease, license, or permit.

(b) Mineral leases, permits, and licenses covering lands within National Forest Wilderness will contain reasonable stipulations for the protection of the wilderness character of the land consistent with the use of the land for purposes for which they are leased, permitted, or licensed. The Chief, Forest Service, shall specify the conditions to be included in such stipulations.

(c) Permits shall not be issued for the removal of mineral materials commonly known as *common varieties* under the Minerals Act of July 31, 1947, as amended and supplemented (30 U.S.C. 601-604).

[39 FR 31321, Aug. 28, 1974]

§ 293.15 Gathering information about resources other than minerals.

(a) The Chief, Forest Service, shall allow any activity, for the purposes of gathering information about resources, other than minerals, in National Forest Wilderness, except that any such activity for gathering information shall be carried on in a manner compatible with the preservation of the wilderness environment. Prospecting for minerals or any activity for the purpose of gathering information about minerals in National Forest Wilderness is subject to the regulations in part 252 of this chapter.

(b) [Reserved]

(c) Any person desiring to use motorized equipment, to land aircraft, or to make substantial excavations for the purpose of gathering information about resources, other than minerals, shall apply in writing to the Office of the Forest Supervisor or District Ranger having jurisdiction over the land involved. Excavations shall be considered *substantial* which singularly or collectively exceed 200 cubic feet within any area which can be bounded by a rectangle containing 20 surface acres. Such use or excavation may be authorized by a permit issued by the Forest Service. Such permits may provide for the protection of National Forest resources, including wilderness values, protection of the public, and restoration of disturbed areas, including the posting of performance bonds.

(d) Prospecting for water resources and the establishment of new reservoirs, water-conservation works, power projects, transmission lines, and other facilities needed in the public interest and the subsequent maintenance of such facilities, all pursuant to section (4)(d)(4)(1) of the Wilderness Act, will be permitted when and as authorized by the President.

[39 FR 31321, Aug. 28, 1974, as amended at 42 FR 35960, July 13, 1977]

§ 293.16 Special provisions governing the Boundary Waters Canoe Area Wilderness, Superior National Forest, Minnesota.

(a) *Motorboat use.* (1) For purposes of this section, motorboats permitted to operate in the BWCA Wilderness are defined as watercraft propelled by a gasoline or electric powered motor with the propeller below the waterline.

(2) Motorboats may operate without restrictions on motor size or number of motors on Sand Point Lake, Little Vermilion Lake, Loon Lake, Loon River, and that portion of Lac La Croix which lies south of Snow Bay and east of Wilkins Bay, all in Saint Louis County.

(3) Motorboats with a motor or combination of motors totaling no more than 25 horsepower may operate on Trout Lake in Saint Louis County, Fall Lake, Moose Lake, Newfound Lake, Newton Lake, Sucker Lake, Snowbank Lake, South Farm Lake, and Basswood Lake, except that portion of Basswood Lake generally north of the narrows at the north end of Jackfish Bay and north of a point on the International Boundary between Ottawa Island and Washington Island, all in Lake County, and East Bearskin Lake and Saganaga Lake, except that portion west of American Point in Cook County.

(4) Motorboats with a motor or combination of motors totaling no more than 10 horsepower may operate on Clearwater Lake, North Fowl Lake, South Fowl Lake, Alder Lake, Canoe Lake, Sea Gull Lake, and Island River east of Lake Isabella, all in Lake County, except that motorboats may not operate (i) after January 1, 1999 on that portion of Sea Gull Lake west of Threemile Island, and (ii) after January 1, 1994, on Brule Lake in Cook County or until the termination of the operation of the resort adjacent to Brule Lake in operation as of 1977, whichever occurs first.

(5) Motorboats with a combination of motors that exceed 25 horsepower may travel on that portion of Saganaga Lake in Cook County described as the Saganaga Corridor extending from the Saganaga Narrows north to the International Boundary east of Campers, Clark and Horseshoe Islands and west of Oskenonton Island; provided that the motor or motors in operation at one time do not exceed 25 horsepower.

(b) *Mechanical and mechanized portages.* (1) BWCA visitors may use portage wheels and other non-motorized devices to transport watercraft over the following routes:

(i) The portages along the International Boundary.

(ii) Four Mile Portage from Fall Lake to Hoist Bay of Basswood Lake.

(iii) The portage from Back Bay to Pipestone Bay of Basswood Lake.

(iv) The portages from Fall Lake to Newton Lake to Pipestone Bay of Basswood Lake.

(v) The portage from Vermilion Lake to Trout Lake.

(2) The Forest Service may authorize, by special use permit, the use of motor vehicles to transport watercraft over the following portages:

(i) Four Mile Portage From Fall Lake to Hoist Bay of Basswood Lake.

(ii) Vermilion Lake to Trout Lake.

(iii) Prairie Portage from Sucker Lake to Basswood Lake

(iv) Loon River to Loon Lake and from Loon Lake to Lac La Croix.

(c) *Snowmobile use.* (1) A snowmobile is defined as a self-propelled, motorized vehicle not exceeding forty inches in width designed to operate on ice and snow, having a ski or skiis in contact with the snow and driven by a track or tracks.

(2) The Forest Service permits use of snowmobiles only on the following routes:

(i) The overland portages in Saint Louis County from Crane Lake to Little Vermilion Lake in Canada.

(ii) The route in Cook County from Sea Gull River along the eastern portion of Saganage Lake to Canada.

(3) The Forest Service may issue special-use authorizations to use snowmobiles for the grooming of specified cross-country ski trails near existing resorts.

[50 FR 16231, April 25, 1985]

§ 293.17 National Forest Primitive Areas.

(a) Within those areas of National Forests classified as *Primitive* on the effective date of the Wilderness Act, September 3, 1964, there shall be no roads or other provision for motorized transportation, no commercial timber cutting, and no occupancy under special-use permit for hotels, stores, resorts, summer homes, organization camps, hunting and fishing lodges, or similar uses: *Provided,* That existing roads over National Forest lands reserved from the public domain and roads necessary for the exercise of a statutory right of ingress and egress may be allowed under appropriate conditions determined by the Chief, Forest Service.

(b) Grazing of domestic livestock, development of water storage projects which do not involve road construction, and improvements necessary for the protection of the National Forests may be permitted, subject to such restrictions as the Chief, Forest Service, deems desirable. Within Primitive Areas, when the use is for other than administrative needs of the Forest Service, use by other Federal agencies when authorized by the Chief, and in emergencies, the landing of aircraft and the use of motorboats are prohibited on National Forest land or water unless such use by aircraft or motorboats has already become well established, the use of motor vehicles is prohibited, and the use of other motorized equipment is prohibited except as authorized by the Chief. These restrictions are not intended as limitations on statutory rights of ingress and egress or of prospecting, locating, and developing mineral resources.

(c) All prohibitions for those areas of National Forest classified as *Primitive* on the effective date of the Wilderness Act, September 3, 1964, are in part 261.

(78 Stat. 890, 16 U.S.C. 1131-1136; 74 Stat. 215, 16 U.S.C. 528-531)

[38 FR 5855, Mar. 5, 1973, as amended at 42 FR 35960, July 13, 1977]

PART 294—SPECIAL AREAS

Sec.
294.1 Recreation areas.
294.2 Navigation of aircraft within airspace reservation over the Boundary Waters Canoe Area Wilderness, Superior National Forest, Minnesota.

§ 294.1 Recreation areas.

Suitable areas of national forest land, other than wilderness or wild areas, which should be managed principally for recreation use may be given special classification as follows:

(a) Areas which should be managed principally for recreation use substantially in their natural condition and on which, in the discretion of the officer making the classification, certain other uses may or may not be permitted may be approved and classified by the Chief of the Forest Service or by such officers as he may designate if the particular area is less than 100,000 acres. Areas of 100,000 acres or more will be approved and classified by the Secretary of Agriculture.

(b) Areas which should be managed for public recreation requiring development and substantial improvements may be given special classification as public recreation areas. Areas in single tracts of not more than 160 acres may be approved and classified by the Chief of the Forest Service or by such officers as he may designate. Areas in excess of 160 acres will be classified by the Secretary of Agriculture. Classification hereunder may include areas used or selected to be used for the development and maintenance as camp grounds, picnic grounds, organization camps, resorts, public service sites (such as for restaurants, filling stations, stores, horse and boat liveries, garages, and similar types of public service accommodations), bathing beaches, winter sports areas, lodges, and similar facilities and appurtenant structures needed by the public to enjoy the recreaton resources of the national forests. The boundaries of all areas so classified shall be clearly marked on the ground and notices of such classification shall be posted at conspicuous places thereon. Areas classified under this section shall thereby be set apart and reserved for public recreation use and such classification shall constitute a formal closing of the area to any use or occupancy inconsistent with the classification.

(Sec. 1, 30 Stat. 35, as amended, 62 Stat. 100, sec. 1, 33 Stat. 628; 16 U.S.C. 551, 472)

[38 FR 5859, Mar. 5, 1973]

§ 294.2 Navigation of aircraft within airspace reservation over the Boundary Waters Canoe Area Wilderness, Superior National Forest, Minnesota.

(a) *Description of areas.* Sections 294.2(b) to 294.2(f), inclusive, apply to those areas of land and water in the Counties of Cook, Lake, and St. Louis, State of Minnesota, within the exterior boundaries of the Superior National Forest, which have heretofore been designated by the Secretary of Agriculture as the Superior Roadless Area, the Little Indian Sioux Roadless Area, and the Caribou Roadless Area, respectively, and to the airspace over said areas and below the altitude of 4,000 feet above sea level. Said areas are more particularly described in the Executive order setting apart said airspace as an airspace reservation (E.O. 10092, Dec. 17, 1949; 3 CFR 1949 Supp.). Copies of said Executive order may be obtained on request from the Forest Supervisor, Superior National Forest, Duluth, Minnesota (hereinafter called "Forest Supervisor").

(b) *Emergency landing and rescue operations.* The pilot of any aircraft landing within any of said areas for reasons of emergency or for conducting rescue operations, shall inform the Forest Supervisor within seven days after the termination of the emergency or the completion of the rescue operation as to the date, place, and duration of landing, and the type and registration number of the aircraft.

(c) *Low flights.* Any person making a flight within said airspace reservation for reasons of safety or for conducting rescue operations shall inform the Forest Supervisor within seven days after the completion of the flight or the rescue operation as to the date, place, and duration of flight, and the type and registration number of the aircraft.

(d) *Official flights.* The provisions of §§ 294.2(b) and 294.2(c) do not apply to flights made for conducting or assisting in the conduct of official business of the United States, of the State of Minnesota or of Cook, St. Louis, or Lake Counties, Minnesota.

(e) *Conformity with law.* Nothing in these regulations shall be construed as permitting the operation of aircraft contrary to the provisions of the Civil Aeronautics Act of 1938 (52 Stat. 973), as amended, or any rule, regulation or order issued thereunder.

(16 U.S.C. 1131; 16 U.S.C. 472)

[38 FR 5859, Mar. 5, 1973, as amended at 50 FR 16232, Apr. 25, 1985]

PART 295—USE OF MOTOR VEHICLES OFF FOREST DEVELOPMENT ROADS

Sec.

295.1 Applicability.
295.2 Planning and designation for use of vehicles off forest development roads.
295.3 Public participation.
295.4 Public information.
295.5 Monitoring effects of vehicle use off forest development roads.
295.6 Revision of off-road vehicle management plans.

AUTHORITY: 30 Stat. 35, as amended (16 U.S.C. 551); 50 Stat. 525, as amended (7 U.S.C. 1011); E.O. 11644, 11989 (42 FR 26959).

SOURCE: 43 FR 20006, May 10, 1978, unless otherwise noted.

§ 295.1 Applicability.

The regulations in the following parts pertain to administrative designation and location of specific areas and trails of National Forest System lands on which the use of vehicles traveling off National Forest development roads is allowed, restricted or prohibited. Prohibitions regarding use of vehicles off roads is provided in 36 CFR Part 261.

§ 295.2 Planning and designation for use of vehicles off forest development roads.

(a) On National Forest System lands, the continuing land management planning process will be used to allow, restrict, or prohibit use by specific vehicle types off roads. This process will include coordination with appropriate Federal, State and local agencies. The planning process will analyze and evaluate current and potential impacts arising from operation of specific vehicle types on soil, water, vegetation, fish and wildlife, forest visitors and cultural and historic resources. If the analysis indicates that the use of one or more vehicle types off roads will cause considerable adverse effects on the resources or other forest visitors, use of the affected areas and trails by the vehicle type or types likely to cause such adverse effects will be restricted or prohibited until such time as the adverse effects can be eliminated as provided in 36 CFR Part 261.

(b) Off-road vehicle management plans shall provide vehicle management direction aimed at resource protection, public safety of all users, minimizing conflicts among users, and provide for diverse use and benefits of the National Forests. Designation of areas and trails shall be in accordance with the following:

(1) Areas and trails shall be located to minimize damage to soil, watershed, vegetation, or other resources of the public lands.

(2) Areas and trails shall be located to minimize harassment of wildlife or significant disruption of wildlife habitats.

(3) Areas and trails shall be located to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands, and to ensure the compatibility of such uses with existing conditions in populated areas, taking into account noise and other factors.

(4) Areas and trails shall not be located in officially designated Wilderness Areas or Primitive Areas.

However, this does not preclude the use of any fire, military, emergency, or law enforcement vehicle for emergency purposes, or the use of any combat or combat support vehicle for national defense purposes, or registered motorboats, or vehicle use expressly authorized by the Chief, Forest Service, under a permit, lease, license, or contract.

§ 295.3 Public participation.

The public shall be provided an opportunity to participate in the process of allowing, restricting, or prohibiting use of areas and trails to one or more specific vehicle types off forest development roads. Sixty days advance notice will be given to allow for public review of proposed or revised designations. In emergency situations, temporary designations up to one year in length may be made or revised without public participation if needed to protect the resources and/or to provide for public safety.

§ 295.4 Public information.

In addition to the requirements of 36 CFR 261.51, information and maps will be published and made available to the public, describing:

(a) The regulation of vehicular use.

(b) Time periods when use is allowed, restricted or prohibited.

(c) The type of vehicle regulated.

§ 295.5 Monitoring effects of vehicle use off forest development roads.

The effects of use by specific types of vehicles off roads on National Forest System lands will be monitored. If the results of monitoring, including public input, indicate that the use of one or more vehicle types off roads is causing or will cause considerable adverse effects on the factors and resource values referred to in § 295.2, the area or trail suffering adverse effects will be immediately closed to the responsible vehicle type or types until the adverse effects have been eliminated and measures have been implemented to prevent future recurrence as provided in 36 CFR Part 261. Forest Supervisors may delegate immediate closure authority to District Rangers or other forest officers in order to facilitate timely actions to meet these objectives. Designations, use restrictions, and operating conditions will be revised as needed to meet changing conditions.

§ 295.6 Revision of off-road vehicle management plans.

Forest Supervisors will annually review off-road vehicle management plans and temporary designations implemented since the last annual review. If the plan needs revision, the public will be given the opportunity to participate in the review as stated in § 295.3.

PART 296—PROTECTION OF ARCHAEOLOGICAL RESOURCES: UNIFORM REGULATIONS

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AUTHORITY: Pub. L. 96-95, 93 Stat. 721 (16 U.S.C. 470aa-11)(Sec. 10(a).) Related Authority: Pub. L. 59-209, 34 Stat. 225 (16 U.S.C. 432, 433); Pub. L. 86-523, 74 Stat. 220, 221 (16 U.S.C. 469), as amended, 88 Stat. 174 (1974); Pub. L. 89-665, 80 Stat. 915 (16 U.S.C. 470a-t), as amended, 84 Stat. 204 (1970), 87 Stat. 139 (1973), 90 Stat. 1320 (1976), 92 Stat. 3467 (1978), 94 Stat. 2987 (1980); Pub. L. 95-341, 92 Stat. 469 (42 U.S.C. 1996).

SOURCE: 49 FR 1027, Jan. 6, 1984, unless otherwise noted.

§ 296.1 Purpose.

(a) The regulations in this part implement provisions of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa-*11*) by establishing the uniform definitions, standards, and procedures to be followed by all Federal land managers in providing protection for archaeological resources, located on public lands and Indian lands of the United States. These regulations enable Federal land managers to protect archaeological resources, taking into consideration provisions of the American Indian Religious Freedom Act (92 Stat. 469; 42 U.S.C. 1996), through permits authorizing excavation and/or removal of archaeological resources, through civil penalties for unauthorized excavation and/or removal, through provisions for the preservation of archaeological resource collections and data, and through provisions for ensuring confidentiality of information about archaeological resources when disclosure would threaten the archaeological resources.

(b) The regulations in this part do not impose any new restrictions on activities permitted under other laws, authorities, and regulations relating to mining, mineral leasing, reclamation, and other multiple uses of the public lands.

§ 296.2 Authority.

(a) The regulations in this part are promulgated pursuant to section 10(a) of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470ii), which requires that the Secretaries of the Interior, Agriculture and Defense and the Chairman of the Board of the Tennessee Valley Authority jointly develop uniform rules and regulations for carrying out the purposes of the Act.

(b) In addition to the regulations in this part, section 10(b) of the Act (16 U.S.C. 470ii) provides that each Federal land manager shall promulgate such rules and regulations, consistent with the uniform rules and regulations in this part, as may be necessary for carrying out the purposes of the Act.

§ 296.3 Definitions.

As used for purposes of this part:

(a) "Archaeological resource" means any material remains of human life or activities which are at least 100 years of age, and which are of archaeological interest.

(1) "Of archaeological interest" means capable of providing scientific or humanistic understandings of past human behavior, cultural adaptation, and related topics through the application of scientific or scholarly techniques such as controlled observation, contextual measurement, controlled collection, analysis, interpretation and explanation.

(2) "Material remains" means physical evidence of human habitation, occupation, use, or activity, including the site, location, or context in which such evidence is situated.

(3) The following classes of material remains (and illustrative examples), if

they are at least 100 years of age, are of archaeological interest and shall be considered archaeological resources unless determined otherwise pursuant to paragraph (a)(4) or (a)(5) of this section:

(i) Surface or subsurface structures, shelters, facilities, or features (including, but not limited to, domestic structures, storage structures, cooking structures, ceremonial structures, artificial mounds, earthworks, fortifications, canals, reservoirs, horticultural/agricultural gardens or fields, bedrock mortars or grinding surfaces, rock alignments, cairns, trails, borrow pits, cooking pits, refuse pits, burial pits or graves, hearths, kilns, post molds, wall trenches, middens);

(ii) Surface or subsurface artifact concentrations or scatters;

(iii) Whole or fragmentary tools, implements, containers, weapons and weapon projectiles, clothing, and ornaments (including, but not limited to, pottery and other ceramics, cordage, basketry and other weaving, bottles and other glassware, bone, ivory, shell, metal, wood, hide, feathers, pigments, and flaked, ground, or pecked stone);

(iv) By-products, waste products, or debris resulting from manufacture or use of human-made or natural materials;

(v) Organic waste (including, but not limited to, vegetal and animal remains, coprolites);

(vi) Human remains (including, but not limited to, bone, teeth, mummified flesh, burials, cremations);

(vii) Rock carvings, rock paintings, intaglios and other works of artistic or symbolic representation;

(viii) Rockshelters and caves or portions thereof containing any of the above material remains;

(ix) All portions of shipwrecks (including, but not limited to, armaments, apparel, tackle, cargo);

(x) Any portion or piece of any of the foregoing.

(4) The following material remains shall not be considered of archaeological interest, and shall not be considered to be archaeological resources for purposes of the Act and this part, unless found in a direct physical relationship with archaeological resources as defined in this section:

(i) Paleontological remains;

(ii) Coins, bullets, and unworked minerals and rocks.

(5) The Federal land manager may determine that certain material remains, in specified areas under the Federal land manager's jurisdiction, and under specified circumstances, are not or are no longer of archaeological interest and are not to be considered archaeological resources under this part. Any determination made pursuant to this subparagraph shall be documented. Such determination shall in no way affect the Federal land manager's obligations under other applicable laws or regulations.

(b) "Arrowhead" means any projectile point which appears to have been designed for use with an arrow.

(c) "Federal land manager" means:

(1) With respect to any public lands, the secretary of the department, or the head of any other agency or instrumentality of the United States, having primary management authority over such lands, including persons to whom such management authority has been officially delegated;

(2) In the case of Indian lands, or any public lands with respect to which no department, agency or instrumentality has primary management authority, such term means the Secretary of the Interior;

(3) The Secretary of the Interior, when the head of any other agency or instrumentality has, pursuant to section 3(2) of the Act and with the consent of the Secretary of the Interior, delegated to the Secretary of the Interior the responsibilities (in whole or in part) in this part.

(d) "Public lands" means:

(1) Lands which are owned and administered by the United States as part of the national park system, the national wildlife refuge system, or the national forest system; and

(2) All other lands the fee title to which is held by the United States, except lands on the Outer Continental Shelf, lands under the jurisdiction of the Smithsonian Institution, and Indian lands.

(e) "Indian lands" means lands of Indian tribes, or Indian individuals, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States, except for subsurface interests not owned or controlled by an Indian tribe or Indian individual.

(f) "Indian tribe" as defined in the Act means any Indian tribe, band, nation, or other organized group or community, including any Alaska village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (85 Stat. 688). In order to clarify this statutory definition for purposes of this part, "Indian tribe" means:

(1) Any tribal entity which is included in the annual list of recognized tribes published in the FEDERAL REGISTER by the Secretary of the Interior pursuant to 25 CFR Part 54;

(2) Any other tribal entity acknowledged by the Secretary of the Interior pursuant to 25 CFR Part 54 since the most recent publication of the annual list; and

(3) Any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and any Alaska Native village or tribe which is recognized by the Secretary of the Interior as eligible for services provided by the Bureau of Indian Affairs.

(g) "Person" means an individual, corporation, partnership, trust, institution, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the United States, or of any Indian tribe, or of any State or political subdivision thereof.

(h) "State" means any of the fifty states, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

(i) "Act" means the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa-*11*).

[49 FR 1027, Jan. 6, 1984; 49 FR 5923, Feb. 16, 1984]

§ 296.4 Prohibited acts.

(a) No person may excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands or Indian lands unless such activity is pursuant to a permit issued under § 296.8 or exempted by § 296.5(b) of this part.

(b) No person may sell, purchase, exchange, transport, or receive any archaeological resource, if such resource was excavated or removed in violation of:

(1) The prohibitions contained in paragraph (a) of this section; or

(2) Any provision, rule, regulation, ordinance, or permit in effect under any other provision of Federal law.

§ 296.5 Permit requirements and exceptions.

(a) Any person proposing to excavate and/or remove archaeological resources from public lands or Indian lands, and to carry out activities associated with such excavation and/or removal, shall apply to the Federal land manager for a permit for the proposed work, and shall not begin the proposed work until a permit has been issued. The Federal land manager may issue a permit to any qualified person, subject to appropriate terms and conditions, provided that the person applying for a permit meets conditions in § 296.8(a) of this part.

(b) *Exceptions*: (1) No permit shall be required under this part for any person conducting activities on the public lands under other permits, leases, licenses, or entitlements for use, when those activities are exclusively for purposes other than the excavation and/or removal of archaeological resources, even though those activities might incidentally result in the disturbance of archaeological resources. General earth-moving excavation conducted under a permit or other authorization shall not be construed to mean excavation and/or removal as used in this part. This exception does not, however, affect the Federal land manager's responsibility to comply with other authorities which protect archaeological resources prior to approving permits, leases, licenses, or entitlements for use; any excavation and/or removal of archaeological resources required for compliance with those authorities shall be conducted in accordance with the permit requirements of this part.

(2) No permit shall be required under this part for any person collecting for private purposes any rock, coin, bullet, or mineral which is not an archaeological resource as defined in this part, provided that such collecting does not result in disturbance of any archaelogical resource.

(3) No permit shall be required under this part or under section 3 of the Act of June 8, 1906 (16 U.S.C. 432), for the excavation or removal by any Indian tribe or member thereof of any archaeological resource located on Indian lands of such Indian tribe, except that in the absence of tribal law regulating the excavation or removal or archaeological resources on Indian lands, an individual tribal member shall be required to obtain a permit under this part;

(4) No permit shall be required under this part for any person to carry out any archaeological activity authorized by a permit issued under section 3 of the Act of June 8, 1906 (16 U.S.C. 432), before the enactment of the Archaeological Resources Protection Act of 1979. Such permit shall remain in effect according to its terms and conditions until expiration.

(5) No permit shall be required under section 3 of the Act of June 8, 1906 (16 U.S.C. 432) for any archaeological work for which a permit is issued under this part.

(c) Persons carrying out official agency duties under the Federal land manager's direction, associated with the management of archaeological resources, need not follow the permit application procedures of § 296.6. However, the Federal land manager shall insure that provisions of § 296.8 and § 296.9 have been met by other documented means, and that any official duties which might result in harm to or destruction of any Indian tribal religious or cultural site, as determined by the Federal land manager, have been the subject of consideration under § 296.7.

(d) Upon the written request of the Governor of any State, on behalf of the State or its educational institutions, the Federal land manager shall issue a permit, subject to the provisions of § 296.5(b)(5), § 296.7, § 296.8(a)(3), (4), (5), (6), and (7), § 296.9, § 296.10, § 296.12, and § 296.13(a) to such Governor or to such designee as the Governor deems qualified to carry out the intent of the Act, for purposes of conducting archaeological research, excavating and/or removing archaeological resources, and safeguarding and preserving any materials and data collected in a university, museum, or other scientific or educational institution approved by the Federal land manager.

(e) Under other statutory, regulatory, or administrative authorities governing the use of public lands and Indian lands, authorizations may be required for activities which do not require a permit under this part. Any person wishing to conduct on public lands or Indian lands any activities related to but believed to fall outside the scope of this part should consult with the Federal land manager, for the purpose of determining whether any authorization is required, prior to beginning such activities.

§ 296.6 Application for permits and information collection.

(a) Any person may apply to the appropriate Federal land manager for a permit to excavate and/or remove archaeological resources from public lands or Indian lands and to carry out activities associated with such excavation and/or removal.

(b) Each application for a permit shall include:

(1) The nature and extent of the work proposed, including how and why it is proposed to be conducted, proposed time of performance, locational maps, and proposed outlet for public written dissemination of the results.

(2) The name and address of the individual(s) proposed to be responsible for conducting the work, institutional affiliation, if any, and evidence of education, training, and experience in accord with the minimal qualifications listed in § 296.8(a).

(3) The name and address of the individual(s), if different from the individual(s) named in paragraph (b)(2) of this section, proposed to be responsible for carrying out the terms and conditions of the permit.

(4) Evidence of the applicant's ability to initiate, conduct, and complete the proposed work, including evidence of logistical support and laboratory facilities.

(5) Where the application is for the excavation and/or removal of archaeological resources on public lands, the names of the university, museum, or other scientific or educational institution in which the applicant proposes to store all collections, and copies of records, data, photographs, and other documents derived from the proposed work. Applicants shall submit written certification, signed by an authorized official of the institution, of willingness to assume curatorial responsibility for the collections, records, data, photographs and other documelts and to safeguard and preserve these materials as property of the United States.

(6) Where the application is for the excavation and/or removal of archaeological resources on Indian lands, the name of the university, museum, or other scientific or educational institution in which the applicant proposes to store copies of records, data, photographs, and other documents derived from the proposed work, and all collections in the event the Indian owners do not wish to take custody or otherwise dispose of the archaeological resources. Applicants shall submit written certification, signed by an authorized official of the institution, or willingness to assume curatorial responsibility for the collections, if applicable, and/or the records, data, photographs, and other documents derived from the proposed work.

(c) The Federal land manager may require additional information, pertinent to land management responsibilities, to be included in the application for permit and shall so inform the applicant.

(d) *Paperwork Reduction Act.* The information collection requirement contained in § 296.6 of these regulations has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024-0037. The purpose of the information collection is to meet statutory and administrative requirements in the public interest. The information will be used to assist Federal land managers in determining that applicants for permits are qualified, that the work proposed would further archaeological knowledge, that archaeological resources and associated records and data will be properly preserved, and that the permitted activity would not conflict with the management of the public lands involved. Response to the information requirement is necessary in order for an applicant to obtain a benefit.

§ 296.7 Notification to Indian tribes of possible harm to, or destruction of, sites on public lands having religious or cultural importance.

(a) If the issuance of a permit under this part may result in harm to, or destruction of, any Indian tribal religious or cultural site on public lands, as determined by the Federal land manager, at least 30 days before issuing such a permit the Federal land manager shall notify any Indian tribe which may consider the site as having religious or cultural importance. Such notice shall not be deemed a disclosure to the public for purposes of section 9 of the Act.

(1) Notice by the Federal land manager to any Indian tribe shall be sent to the chief executive officer or other designated official of the tribe. Indian tribes are encouraged to designate a tribal official to be the focal point for any notification and discussion between the tribe and the Federal land manager.

(2) The Federal land manager may provide notice to any other Native American group that is known by the Federal land manager to consider sites potentially affected as being of religious or cultural importance.

(3) Upon request during the 30-day period, the Federal land manager may meet with official representatives of any Indian tribe or group to discuss their interests, including ways to avoid or mitigate potential harm or destruction such as excluding sites from the permit area. Any mitigation measures which are adopted shall be incorporated into the terms and conditions of the permit under § 296.9.

(4) When the Federal land manager detemines that a permit applied for

under this part must be issued immediately because of an imminent threat of loss or destruction of an archaeological resource, the Federal land manager shall so notify the appropriate tribe.

(b)(1) In order to identify sites of religious or cultural importance, the Federal land manager shall seek to identify all Indian tribes having aboriginal or historic ties to the lands under the Federal land manager's jurisdiction and seek to determine, from the chief executive officer or other designated official of any such tribe, the location and nature of specific sites of religious or cultural importance so that such information may be on file for land management purposes. Information on sites eligible for or included in the National Register of Historic Places may be withheld from public disclosure pursuant to section 304 of the Act of October 15, 1966, as amended (16 U.S.C. 470w-3).

(2) If the Federal land manager becomes aware of a Native American group that is not an Indian tribe as defined in this part but has aboriginal or historic ties to public lands under the Federal land manager's jurisdiction, the Federal land manager may seek to communicate with official representatives of that group to obtain information on sites they may consider to be of religious or cultural importance.

(3) The Federal land manager may enter into agreement with any Indian tribe or other Native American group for determining locations for which such tribe or group wishes to receive notice under this section.

§ 296.8 Issuance of permits.

(a) The Federal land manager may issue a permit, for a specified period of time appropriate to the work to be conducted, upon determining that:

(1) The applicant is appropriately qualified, as evidenced by training, education, and/or experience, and possesses demonstrable competence in archaeological theory and methods, and in collecting, handling, analyzing, evaluating, and reporting archaeological data, relative to the type and scope of the work proposed, and also meets the following minimum qualifications:

(i) A graduate degree in anthropology or archaeology, or equivalent training and experience;

(ii) The demonstrated ability to plan, equip, staff, organize, and supervise activity of the type and scope proposed;

(iii) The demonstrated ability to carry research to completion, as evidenced by timely completion of theses, research reports, or similar documents;

(iv) Completion of at least 16 months of professional experience and/or specialized training in archaeological field, laboratory, or library research, administration, or management, including at least 4 months experience and/or specialized training in the kind of activity the individual proposes to conduct under authority of a permit; and

(v) Applicants proposing to engage in historical archaeology should have had at least one year of experience in research concerning archaeological resources of the historic period. Applicants proposing to engage in prehistoric archaeology should have had at least one year of experience in research concerning archaeological resources of the prehistoric period.

(2) The proposed work is to be undertaken for the purpose of furthering archaeological knowledge in the public interest, which may include but need not be limited to, scientific or scholarly research, and preservation of archaeological data;

(3) The proposed work, including time, scope, location, and purpose, is not inconsistent with any management plan or established policy, objectives, or requirements applicable to the management of the public lands concerned;

(4) Where the proposed work consists of archaeological survey and/or data recovery undertaken in accordance with other approved uses of the public lands or Indian lands, and the proposed work has been agreed to in writing by the Federal land manager pursuant to section 106 of the National Historic Preservation Act (16 U.S.C. 470f), paragraphs (a) (2) and (3) shall be deemed satisfied by the prior approval.

(5) Written consent has been obtained, for work proposed on Indian lands, from the Indian landowner and the Indian tribe having jurisdiction over such lands;

(6) Evidence is submitted to the Federal land manager that any university, museum, or other scientific or educational institution proposed in the application as the repository possesses adequate curatorial capability for safeguarding and preserving the archaeological resources and all associated records; and

(7) The applicant has certified that, not later than 90 days after the date the final report is submitted to the Federal land manager, the following will be delivered to the appropriate official of the approved university, museum, or other scientific or educational institution, which shall be named in the permit:

(i) All artifacts, samples, collections, and copies of records, data, photographs, and other documents resulting from work conducted under the requested permit where the permit is for the excavation and/or removal of archaeological resources from public lands.

(ii) All artifacts, samples and collections resulting from work under the requested permit for which the custody or disposition is not undertaken by the Indian owners, and copies of records, data, photographs, and other documents resulting from work conducted under the requested permit, where the permit is for the excavation and/or removal of archaeological resources from Indian lands.

(b) When the area of the proposed work would cross jurisdictional boundaries, so that permit applications must be submitted to more than one Federal land manager, the Federal land managers shall coordinate the review and evaluation of applications and the issuance of permits.

[49 FR 1027, Jan. 6, 1984; 49 FR 5923, Feb. 16, 1984]

§ 296.9 Terms and conditions of permits.

(a) In all permits issued, the Federal land manager shall specify:

(1) The nature and extent of work allowed and required under the permit, including the time, duration, scope, location, and purpose of the work;

(2) The name of the individual(s) responsible for conducting the work and, if different, the name of the individual(s) responsible for carrying out the terms and conditions of the permit;

(3) The name of any university, museum, or other scientific or educational insitutions in which any collected materials and data shall be deposited; and

(4) Reporting requirements.

(b) The Federal land manager may specify such terms and conditions as deemed necessary, consistent with this part, to protect public safety and other values and/or resources, to secure work areas, to safeguard other legitimate land uses, and to limit activities incidental to work authorized under a permit.

(c) The Federal land manager shall include in permits issued for archaeological work on Indian lands such terms and conditions as may be requested by the Indian landowner and the Indian tribe having jurisdiction over the lands, and for archaeological work on public lands shall include such terms and conditions as may have been developed pursuant to § 296.7.

(d) Initiation of work or other activities under the authority of a permit signifies the permittee's acceptance of the terms and conditions of the permit.

(e) The permittee shall not be released from requirements of a permit until all outstanding obligations have been satisfied, whether or not the term of the permit has expired.

(f) The permittee may request that the Federal land manager extend or modify a permit.

(g) The permittee's performance under any permit issued for a period greater than 1 year shall be subject to review by the Federal land manager, at least annually.

§ 296.10 Suspension and revocation of permits.

(a) *Suspension or revocation for cause.* (1) The Federal land manager may suspend a permit issued pursuant to this part upon determining that the permittee has failed to meet any of the terms and conditions of the permit or has violated any prohibition of the Act or § 296.4. The Federal land manager shall provide written notice to the permittee of the suspension, the cause thereof, and the requirements which must be met before the suspension will be removed.

(2) The Federal land manager may revoke a permit upon assessment of a civil penalty under § 296.15 upon the permittee's conviction under section 6 of the Act, or upon determining that the permittee has failed after notice under this section to correct the situation which led to suspension of the permit.

(b) *Suspension or revocation for management purposes.* The Federal land manager may suspend or revoke a permit, without liability to the United States, its agents, or employees, when continuation of work under the permit would be in conflict with management requirements not in effect when the permit was issued. The Federal land manager shall provide written notice to the permittee stating the nature of and basis for the suspension or revocation.

[49 FR 1027, Jan. 6, 1984; 49 FR 5923, Feb. 16, 1984]

§ 296.11 Appeals relating to permits.

Any affected person may appeal permit issuance, denial of permit issuance, suspension, revocation, and terms and conditions of a permit through existing administrative appeal procedures, or through procedures which may be established by the Federal land manager pursuant to section 10(b) of the Act and this part.

§ 296.12 Relationship to Section 106 of the National Historic Preservation Act.

Issuance of a permit in accordance with the Act and this part does not constitute an undertaking requiring compliance with section 106 of the Act of October 15, 1966 (16 U.S.C. 470f). However, the mere issuance of such a permit does not excuse the Federal land manager from compliance with section 106 where otherwise required.

§ 296.13 Custody of archaeological resources.

(a) Archaeological resources excavated or removed from the public lands remain the property of the United States.

(b) Archaeological resources excavated or removed from Indian lands remain the property of the Indian or Indian tribe having rights of ownership over such resources.

(c) The Secretary of the Interior may promulgate regulations providing for the exchange of archaeological resources among suitable universities, museums, or other scientific or educational institutions, for the ultimate disposition of archaeological resources, and for standards by which archaeological resources shall be preserved and maintained, when such resources have been excavated or removed from public lands and Indian lands.

(d) In the absence of regulations referenced in paragraph (c) of this section, the Federal land manager may provide for the exchange of archaeological resources among suitable universities, museums, or other scientific or educational institutions, when such resources have been excavated or removed from public lands under the authority of a permit issued by the Federal land manager.

§ 296.14 Determination of archaeological or commercial value and cost of restoration and repair.

(a) *Archaeological value.* For purposes of this part, the archaeological value of any archaeological resource involved in a violation of the prohibitions in § 296.4 of this part or conditions of a permit issued pursuant to this part shall be the value of the information associated with the archaeological resource. This value shall be appraised in terms of the costs of the retrieval of the scientific information which would have been obtainable prior to the violation. These costs may include, but need not be limited to, the cost of preparing a research design, conducting field work, carrying out laboratory analysis, and preparing reports as would be necessary to realize the information potential.

(b) *Commercial value.* For purposes of this part, the commercial value of any archaeological resource involved in a violation of the prohibitions in § 296.4 of this part or conditions of a permit issued pursuant to this part shall be its fair market value. Where the violation has resulted in damage to the archaeological resource, the fair market value should be determined using the condition of the archaeological resource prior to the violation, to the extent that its prior condition can be ascertained.

(c) *Cost of restoration and repair.* For purposes of this part, the cost of restoration and repair of archaeological resources damaged as a result of a violation of prohibitions or conditions pursuant to this part, shall be the sum of the costs already incurred for emergency restoration or repair work, plus those costs projected to be necessary to complete restoration and repair, which may include, but need not be limited to, the costs of the following:

(1) Reconstruction of the archaeological resource;

(2) Stabilization of the archaeological resource;

(3) Ground contour reconstruction and surface stabilization;

(4) Research necessary to carry out reconstruction or stabilization;

(5) Physical barriers or other protective devices, necessitated by the disturbance of the archaeological resource, to protect it from further disturbance;

(6) Examination and analysis of the archaeological resource including recording remaining archaeological information, where necessitated by disturbance, in order to salvage remaining values which cannot be otherwise conserved;

(7) Reinterment of human remains in accordance with religious custom and State, local, or tribal law, where appropriate, as determined by the Federal land manager.

(8) Preparation of reports relating to any of the above activities.

§ 296.15 Assessment of civil penalties.

(a) The Federal land manager may assess a civil penalty against any person who has violated any prohibition contained in § 296.4 or who has violated any term or condition included in a permit issued in accordance with the Act and this part.

(b) *Notice of violation.* The Federal land manager shall serve a notice of violation upon any person believed to be subject to a civil penalty, either in person or by registered or certified mail (return receipt requested). The Federal land manager shall include in the notice:

(1) A concise statement of the facts believed to show a violation;

(2) A specific reference to the provision(s) of this part or to a permit issued pursuant to this part allegedly violated;

(3) The amount of penalty proposed to be assessed, including any initial proposal to mitigate or remit where appropriate, or a statement that notice of a proposed penalty amount will be served after the damages associated with the alleged violation have been ascertained;

(4) Notification of the right to file a petition for relief pursuant to paragraph (d) of this section, or to await the Federal land manager's notice of assessment, and to request a hearing in accordance with paragraph (g) of this section. The notice shall also inform the person of the right to seek judicial review of any final administrative decision assessing a civil penalty.

(c) The person served with a notice of violation shall have 45 calendar days from the date of its service (or the date of service of a proposed penalty amount, if later) in which to respond. During this time the person may:

(1) Seek informal discussions with the Federal land manager;

(2) File a petition for relief in accordance with paragraph (d) of this section;

(3) Take no action and await the Federal land manager's notice of assessment;

(4) Accept in writing or by payment the proposed penalty, or any mitigation or remission offered in the notice. Acceptance of the proposed penalty or mitigation or remission shall be deemed a waiver of the notice of assessment and of the right to request a hearing under paragraph (g) of this section.

(d) *Petition for relief.* The person served with a notice of violation may request that no penalty be assessed or that the amount be reduced, by filing a petition for relief with the Federal land manager within 45 calendar days of the date of service of the notice of violation (or of a proposed penalty amount, if later). The petition shall be in writing and signed by the person served with the notice of violation. If the person is a corporation, the petition must be signed by an officer authorized to sign such documents. The petition shall set forth in full the legal or factual basis for the requested relief.

(e) *Assessment of penalty.* (1) The Federal land manager shall assess a civil penalty upon expiration of the period for filing a petition for relief, upon completion of review of any petition filed, or upon completion of informal discussions, whichever is later.

(2) The Federal land manager shall take into consideration all available information, including information provided pursuant to paragraphs (c) and (d) of this section or furnished upon further request by the Federal land manager.

(3) If the facts warrant a conclusion that no violation has occurred, the Federal land manager shall so notify the person served with a notice of violation, and no penalty shall be assessed.

(4) Where the facts warrant a conclusion that a violation has occurred, the Federal land manager shall determine a penalty amount in accordance with § 296.16.

(f) *Notice of assessment.* The Federal land manager shall notify the person served with a notice of violation of the penalty amount assessed by serving a written notice of assessment, either in person or by registered or certified mail (return receipt requested). The Federal land manager shall include in the notice of assessment:

(1) The facts and conclusions from which it was determined that a violation did occur;

(2) The basis in § 296.16 for determining the penalty amount assessed and/or any offer to mitigate or remit the penalty; and

(3) Notification of the right to request a hearing, including the procedures to be followed, and to seek judicial review of any final administrative decision assessing a civil penalty.

(g) *Hearings.* (1) Except where the right to request a hearing is deemed to have been waived as provided in paragraph (c)(4) of this section, the person served with a notice of assessment may file a written request for a hearing with the adjudicatory body specified in the notice. The person shall enclose with the request for hearing a copy of the notice of assessment, and shall deliver the request as specified in the notice of assessment, personally or by registered or certified mail (return receipt requested).

(2) Failure to deliver a written request for a hearing within 45 days of the date of service of the notice of assessment shall be deemed a waiver of the right to a hearing.

(3) Any hearing conducted pursuant to this section shall be held in accordance with 5 U.S.C. § 554. In any such hearing, the amount of civil penalty assessed shall be determined in accordance with this part, and shall not be limited by the amount assessed by the Federal land manager under paragraph (f) of this section or any offer of mitigation or remission made by the Federal land manager.

(h) *Final administrative decision.* (1) Where the person served with a notice of violation has accepted the penalty pursuant to paragraph (c)(4) of this section, the notice of violation shall constitute the final administrative decision;

(2) Where the person served with a notice of assessment has not filed a timely request for a hearing pursuant to paragraph (g)(1) of this section, the notice of assessment shall constitute the final administrative decision;

(3) Where the person served with a notice of assessment has filed a timely request for a hearing pursuant to paragraph (g)(1) of this section, the decision resulting from the hearing or any applicable administrative appeal therefrom shall constitute the final administrative decision.

(i) *Payment of penalty.* (1) The person assessed a civil penalty shall have 45 calendar days from the date of issuance of the final administrative decision in which to make full payment of the penalty assessed, unless a timely request for appeal has been filed with a United States District Court as provided in section 7(b)(1) of the Act.

(2) Upon failure to pay the penalty, the Federal land manager may request the Attorney General to institute a civil action to collect the penalty in a United States District Court for any district in which the person assessed a civil penalty is found, resides, or transacts business. Where the Federal land manager is not represented by the Attorney General, a civil action may be initiated directly by the Federal land manager.

(j) *Other remedies not waived.* Assessment of a penalty under this section shall not be deemed a waiver of the right to pursue other available legal or administrative remedies.

§ 296.16 Civil penalty amounts.

(a) *Maximum amount of penalty.* (1) Where the person being assessed a civil penalty has not committed any previous violation of any prohibition in § 296.4 or of any term or condition included in a permit issued pursuant to this part, the maximum amount of the penalty shall be the full cost of restoration and repair of archaeological resources damaged plus the archaeological or commercial value of archaeological resources destroyed or not recovered.

(2) Where the person being assessed a civil penalty has committed any previous violation of any prohibition in § 296.4 or of any term or condition included in a permit issued pursuant to this part, the maximum amount of the penalty shall be double the cost of restoration and repair plus double the archaeological or commercial value of archaeological resources destroyed or not recovered.

(3) Violations limited to the removal of arrowheads located on the surface of the ground shall not be subject to the penalties prescribed in this section.

(b) *Determination of penalty amount, mitigation, and remission.* The Federal land manager may assess a penalty amount less than the maximum amount of penalty and may offer to mitigate or remit the penalty.

(1) Determination of the penalty amount and/or a proposal to mitigate or remit the penalty may be based upon any of the following factors:

(i) Agreement by the person being assessed a civil penalty to return to the Federal land manager archaeological resources removed from public lands or Indian lands;

(ii) Agreement by the person being assessed a civil penalty to assist the Federal land manager in activity to preserve, restore, or otherwise contribute to the protection and study of archaeological resources on public lands or Indian lands;

(iii) Agreement by the person being assessed a civil penalty to provide information which will assist in the detection, prevention, or prosecution of violations of the Act or this part;

(iv) Demonstration of hardship or inability to pay, provided that this factor shall only be considered when the person being assessed a civil penalty has not been found to have previously violated the regulations in this part;

(v) Determination that the person being assessed a civil penalty did not willfully commit the violation;

(vi) Determination that the proposed penalty would constitute excessive punishment under the circumstances;

(vii) Determination of other mitigating circumstances appropriate to consideration in reaching a fair and expeditious assessment.

(2) When the penalty is for a violation on Indian lands, the Federal land manager shall consult with and consider the interests of the Indian landowner and the Indian tribe having jurisdiction over the Indian lands prior to proposing to mitigate or remit the penalty.

(3) When the penalty is for a violation which may have had an effect on a known Indian tribal religious or cultural site on public lands, the Federal land manager should consult with and consider the interests of the affected tribe(s) prior to proposing to mitigate or remit the penalty.

[49 FR 1027, Jan. 6, 1984, as amended at 52 FR 47721, Dec. 16, 1987]

§ 296.17 Other penalties and rewards.

(a) Section 6 of the Act contains criminal prohibitions and provisions for criminal penalties. Section 8(b) of the Act provides that archaeological resources, vehicles, or equipment involved in a violation may be subject to forfeiture.

(b) Section 8(a) of the Act provides for rewards to be made to persons who furnish information which leads to conviction for a criminal violation or to assessment of a civil penalty. The Federal land manager may certify to the Secretary of the Treasury that a person is eligible to receive payment. Officers and employees of Federal, State, or local government who furnish information or render service in the performance of their official duties, and persons who have provided information under 296.16(b)(1)(iii) shall not be certified eligible to receive payment of rewards.

(c) In cases involving Indian lands, all civil penalty monies and any item forfeited under the provisions of this section shall be transferred to the appropriate Indian or Indian tribe.

§ 296.18 Confidentiality of archaeological resource information.

(a) The Federal land manager shall not make available to the public, under subchapter II of chapter 5 of title 5 of the United States Code or any other provision of law, information concerning the nature and location of any archaeological resource, with the following exceptions:

(1) The Federal land manager may make information available, provided that the disclosure will further the purposes of the Act and this part, or the Act of June 27, 1960, as amended (16 U.S.C. 469-469c), without risking harm to the archaeological resource or to the site in which it is located.

(2) The Federal land manager shall make information available, when the Governor of any State has submitted to the Federal land manager a written request for information, concerning the archaeological resources within the requesting Governor's State, provided that the request includes:

(i) The specific archaeological resource or area about which information is sought;

(ii) The purpose for which the information is sought; and

(iii) The Governor's written commitment to adequately protect the confidentiality of the information.

[49 FR 1027, Jan. 6, 1984; 49 FR 5923, Feb. 16, 1984]

§ 296.19 Report.

Each Federal land manager, when requested by the Secretary of the Interior, shall submit such information as is necessary to enable the Secretary to comply with section 13 of the Act.

PART 297—WILD AND SCENIC RIVERS

Subpart A—Water Resources Projects

Sec.
297.1 General.
297.2 Scope and application.
297.3 Definitions.
297.4 Requirements for Federal agencies.
297.5 Determination.
297.6 Environmental analysis requirements.

AUTHORITY: 16 U.S.C. 551, 1278(c), 1281(d).

SOURCE: 49 FR 1902, Jan. 16, 1984. Correctly designated at 49 FR 6896, Feb. 24, 1984, unless otherwise noted.

Subpart A—Water Resources Projects

§ 297.1 General.

Section 7 of the Wild and Scenic Rivers Act (16 U.S.C. 1278), as amended, provides for the protection of the free-flowing, scenic, and natural values of rivers designated as components or potential components of the National Wild and Scenic Rivers System from the effects of construction of any water resources project.

§ 297.2 Scope and application.

These rules apply to Federal assistance in the construction of water resources projects affecting Wild and Scenic Rivers or Study Rivers administered in whole or part by the Secretary of Agriculture.

§ 297.3 Definitions.

"*Act*" means the Wild and Scenic Rivers Act (82 Stat. 906, as amended; 16 U.S.C. 1271-1288).

"*Construction*" means any action carried on with Federal assistance affecting the free-flowing characteristics or the scenic or natural values of a Wild and Scenic River or Study River.

"*Federal assistance*" means any assistance by an authorizing agency including, but not limited to, the following:

(a) A license, permit, preliminary permit, or other authorization granted by the Federal Energy Regulatory Commission pursuant to sections 4(e) and 4(f) of the Federal Power Act, 16 U.S.C. 797;

(b) A license, permit, or other authorization granted by the Corps of Engineers, Department of the Army, pursuant to the Rivers and Harbors Act of 1899 (33 U.S.C. 401 *et seq.*), and section 404 of the Clean Water Act (33 U.S.C. 1344); and,

(c) Any other license, permit, or authorization which may be required by an agency or Department of the Federal Government before, during, or after construction of a water resources project.

"*Free-flowing*" is defined by section 16(b) of the Act as "existing or flowing in natural condition without impoundment, diversion, straightening, riprapping, or other modification of the waterway" (16 U.S.C. 1287(b)).

"*Study period*" means the time during which a river is being studied as a potential component of the Wild and Scenic Rivers System and such additional time as provided in section 7(b)(ii) of the Act not to exceed 3 additional years during which a report recommending designation is before the Congress, or such additional time as may be provided by statute.

"*Study river*" means a river and the adjacent area within one quarter mile of the banks of the river which is designated for study as a potential addition to the National Wild and Scenic Rivers System pursuant to section 5(a) of the Act.

"*Water resources project*" means any dam, water conduit, reservoir, powerhouse, transmission line, or other project works under the Federal Power Act (41 Stat. 1063) as amended, or other construction of developments which would affect the free-flowing characteristics of a Wild and Scenic River or Study River.

"*Wild and scenic river*" means a river and the adjacent area within the boundaries of a component of the National Wild and Scenic Rivers System pursuant to section 3(a) or 2(a)(ii) of the Act.

§ 297.4 Requirements for Federal agencies.

(a) No license, permit, or other authorization can be issued for a Federally assisted water resources project on any portion of a Wild and Scenic River or Study River nor can appropriations be requested to begin construction of such projects, without prior notice to the Secretary of Agriculture, and a determination in accordance with section 7 of the Act.

(b) As soon as practicable, but no less than 60 days prior to the date of proposed action, the Federal agency shall provide a notice of intent to issue such license, permit, or other authorization to the Chief, Forest Service, U.S. Department of Agriculture, P.O. Box 2417, Washington, D.C. 20013. The Secretary will, to the extent possible, give expedited consideration to a notice of intent for a project needed to address an emergency situation.

(c) The notice shall include the following information:

(1) Name and location of affected river;

(2) Location of the project;

(3) Nature of the permit or other authorization proposed for issuance;

(4) A description of the proposed activity; and

(5) Any relevant information, such as plans, maps, and environmental studies, assessments, or environmental impact statements.

§ 297.5 Determination.

(a) The Secretary of Agriculture will consent to the issuance of any Federal license, permit, or other authorization if, as a finding of fact, it is determined that:

(1) The water resources project will not have a direct and adverse effect on

the values for which a Wild and Scenic River or Study River was designated, when any portion of the project is within the boundaries of said river, or;

(2) The effects of the water resources project will neither invade nor unreasonably diminish the scenic, recreational, and fish wildlife values of a Wild and Scenic River, when any portion of the project is located above, below, or outside the Wild and Scenic River, or;

(3) The effects of the water resources project will neither invade nor diminish the scenic, recreational, and fish and wildlife values of a Study River when the project is located above, below, or outside the Study River during the study period.

(b) If consent is denied, the Secretary may recommend measures to eliminate adverse effects, and the authorizing agencies may submit revised plans for consideration.

§ 297.6 Environmental analysis requirements.

(a) The determination of the effects of a proposed water resources project shall be made in compliance with the National Environmental Policy Act (NEPA). To the extent possible, authorizing agencies should ensure that any environmental studies, assessments, or environmental impact statements prepared for a water resources project adequately address the environmental effects on resources protected by the Wild and Scenic Rivers Act, and that the Department of Agriculture is apprised of ongoing analyses so as to facilitate coordination and identification of Wild and Scenic River related issues.

(b) To the extent practicable, impacts on Wild and Scenic River values will be considered in the context of other review procedures provided by law. Authorizing agencies are encouraged to consult with the Forest Service in order to identify measures which could eliminate any direct and adverse effects, thereby increasing the likelihood of securing consent.

PARTS 298—299 [RESERVED]

CHAPTER III—CORPS OF ENGINEERS, DEPARTMENT OF THE ARMY

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PART 312—PROHIBITION OF DISCRIMINATORY PRACTICES IN WATER RESOURCE DEVELOPMENT PROJECTS

Sec.
312.1 Areas covered.
312.2 Discriminatory practices prohibited.

AUTHORITY: Sec. 4, 58 Stat. 889, as amended; 16 U.S.C. 460d.

§ 312.1 Areas covered.

The regulation covered in this part shall be applicable to all water resource project lands under the supervision of the Secretary of the Army not covered in Parts 311 and 326, of this title.

[29 FR 9710, July 18, 1964]

§ 312.2 Discriminatory practices prohibited.

All project land and water areas which are open to the public shall be available for use and enjoyment by the public without regard to race, creed, color or national origin. Each lessee or licensee of a project area under lease or license providing for a public or quasi-public use, including group camp activities, and each concessionaire of a lessee or licensee providing a service to the public including facilities and accommodations, shall not discriminate against any person or persons because of race, creed, color or national origin in the conduct of its operations under the lease, license or concession agreement.

[29 FR 9710, July 18, 1964]

PART 327—RULES AND REGULATIONS GOVERNING PUBLIC USE OF WATER RESOURCE DEVELOPMENT PROJECTS ADMINISTERED BY THE CHIEF OF ENGINEERS

Sec.
327.0 Applicability.
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327.6 Picnicking.
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327.13 Explosives, firearms, other weapons and fireworks.
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327.18 Commercial activities.
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327.20 Unauthorized structures.
327.21 Special events.
327.22 Unauthorized occupation.
327.23 Recreation use fees.
327.24 Interference with Government employees.
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327.26 State and local laws.
327.27–327.29 [Reserved]
327.30 Lakeshore management on civil works projects. [Reserved]

AUTHORITY: Sec. 4, Act of December 22, 1944, 58 Stat. 889, as amended (16 U.S.C. 460d); sec. 210 of Pub. L. 90-483, 82 Stat. 746; and Pub. L. 88-578, 78 Stat. 897, as amended (16 U.S.C. 460l-6a).

SOURCE: 50 FR 35556, Sept. 3, 1985, unless otherwise noted.

§ 327.0 Applicability.

The regulations covered in this Part 327 shall be applicable to water resource development projects, completed or under construction, administered by the Chief of Engineers, and to those portions of jointly administered water resource development projects which are under the administrative jurisdiction of the Chief of Engineers. All other Federal, State and local laws and regulations remain in full force and effect where applicable to those water resource development projects.

§ 327.1 Policy.

(a) It is the policy of the Secretary of the Army, acting through the Chief of Engineers, to manage the natural, cultural and developed resources of each project in the public interest, providing the public with safe and healthful recreational opportunities while protecting and enhancing these resources.

(b) Unless otherwise indicated herein, the term "District Engineer" shall include the authorized representatives of the District Engineer.

(c) The term "project" or "water resource development project" refers to the water areas of any water resource development project administered by the Chief of Engineers, without regard to ownership of underlying land, to all lands owned in fee by the Federal Government and to all facilities therein or thereon of any such water resource development project.

(d) All water resource development projects open for public use shall be available to the public without regard to sex, race, color, creed, age, nationality or place of origin. No lessee, licensee, or concessionaire providing a service to the public shall discriminate against any person because of sex, race, creed, color, age, nationality or place of origin in the conduct of the operations under the lease, license or concession contract.

(e) In addition to the regulations in this Part 327, all applicable Federal, state and local laws and regulations remain in full force and effect on project lands or waters which are outgranted by the District Engineer by lease, license or other written agreement.

(f) The regulations in this Part 327 shall be deemed to apply to those lands and waters which are subject to treaties and Federal laws and regulations concerning the rights of Indian Nations and which lands and waters are incorporated, in whole or in part, within water resource development projects administered by the Chief of Engineers, to the extent that the regulations in this Part 327 are not inconsistent with such treaties and Federal laws and regulations.

(g) Any violation of any section of this Part 327 shall constitute a separate violation for each calendar day in which it occurs.

(h) For the purposes of this Part 327, the owner of any unattended vehicle, vessel or aircraft as described herein shall be presumed to be responsible for its use on project property. Unless proven otherwise, such presumption will be sufficient to issue a citation for the violation of regulations applicable to the use of such vehicle, vessel or aircraft as provided for in § 327.25, Violation of Rules and Regulations.

§ 327.2 Vehicles.

(a) This section pertains to all vehicles, including, but not limited to, automobiles, trucks, motorcycles, mini-bikes, snowmobiles, dune buggies, all-terrain vehicles and trailers, campers, bicycles or any other such equipment.

(b) Vehicles shall not be parked in violation of posted restrictions, or in such a manner as to obstruct or impede normal or emergency traffic movement or the parking of other vehicles, create a safety hazard, or endanger any person, project property or environmental feature. Vehicles so parked are subject to removal and impoundment at the owner's expense.

(c) The operation and/or parking of a vehicle off authorized roadways is prohibited except at locations and times designated by the District Engineer. Taking any vehicle through, around or beyond a restrictive sign, recognizable barricade, fence or traffic control barrier is prohibited.

(d) Vehicles shall be operated only in accorance with posted regulations and applicable Federal, state and local laws, which shall be enforced by authorized enforcement officials.

(e) No person shall operate any vehicle in a careless, negligent or reckless manner so as to endanger any person, project property or environmental feature.

(f) At developed recreation areas, vehicles shall be used only to enter or leave the area or individual sites or facilities unless otherwise posted.

(g) Except as authorized by the District Engineer, no person shall operate any motorized vehicle without a proper and effective exhaust muffler as defined by state and local laws, or with an exhaust muffler cutout open, or in any other manner which renders the exhaust muffler ineffective in muffling the sound of engine exhaust.

§ 327.3 Vessels.

(a) This section pertains to all vessels or watercraft, including, but not limited to, powerboats, cruisers, houseboats, sailboats, rowboats, canoes, kayaks, jetskis and any other such equipment capable of navigation on water, whether in motion or at rest.

(b) The placement and/or operation of any vessel or watercraft for a fee or profit upon project waters or lands is prohibited except as authorized by permit, lease, license, or concession contract with the Department of the Army. This paragraph (§ 327.3(b)) shall not apply to the operation of commercial tows or passenger carrying vessels not based at a Corps project which utilize project waters as a link in continous transit over navigable waters of the United States.

(c) Vessels or other watercraft may be operated on the project waters, except in prohibited or restricted areas, in accordance with posted regulations, including buoys, and applicable Federal, state and local laws, as regulated by authorized enforcement officials. All vessels or watercraft so required by applicable Federal, state and local laws shall display an appropriate registration on board whenever the vessel is operated on project waters.

(d) The operation of vessels or other watercraft in a careless, negligent or reckless manner so as to endanger any property or person (including the operator and/or user(s) of the vessel or watercraft) is prohibited.

(e) All vessels, when in use, shall have safety equipment, including personal floatation devices, on board in compliance with U.S. Coast Guard boating safety requirements (Coast Guard Pamphlet CG-290; 46 CFR Parts 25, 30; 33 CFR Part 175) and in compliance with boating safety laws issued and enforced by the state in which the vessel is being operated.

(f) Unless otherwise permitted by Federal, state or local law, vessels or other watercraft, while moored in commercial facilities, community or corporate docks, or at any fixed or permanent mooring point, may only be used for overnight occupancy when such use is incidental to recreational boating. Vessels or other watercraft are *not* to be used as a place of habitation or residence.

(g) Water skis, parasails, ski-kites and similar devices are permitted in nonrestricted areas except that they may not be used in a careless, negligent, or reckless manner so as to endanger any property or person (including the user and/or operator of the towing vessel).

(h) All vessels when not in actual use shall be removed from project lands and water unless securely moored or stored at designated areas approved by the District Engineer. The placing of floating or stationary mooring facilities on, adjacent to, or interfering with a buoy, channel marker or other navigational aid is prohibited.

(i) The use at a project of any vessel not constructed or maintained in compliance with the standards and requirements established by the Federal Safe Boating Act of 1971 (Pub. L 92-75, 85 Stat. 213), or promulgated pursuant to such act, is prohibited.

(j) Except as authorized by the District Engineer, no person shall operate any vessel or watercraft without a proper and effective exhaust muffler as defined by State and local laws, or with an exhaust muffler cutout open, or in any other manner which renders the exhaust muffler ineffective in muffling the sound of engine exhaust.

§ 327.4 Aircraft.

(a) This section pertains to all aircraft including, but not limited to, airplanes, seaplanes, helicopters, ultralight aircraft, motorized hang gliders, hot air balloons, any non-powered flight devices or any other such equipment.

(b) The operation of aircraft on project lands at locations other than those designated by the District Engineer is prohibited. This provision shall not be applicable to aircraft engaged on official business of Federal, state or local governments or law enforcement agencies, aircraft used in emergency rescue in accordance with the directions of the District Engineer or aircraft forced to land due to circumstances beyond the control of the operator.

(c) No person shall operate any aircraft while on or above project waters or project lands in a careless, negligent or reckless manner so as to endanger any person or property.

(d) Nothing in this section (§ 327.4) bestows authority to deviate from rules and regulations or prescribed standards of the appropriate State Aeronautical Agency, or the Federal Aviation Administration, including, but not limited to, regulations and standards concerning pilot certifications or ratings, and airspace requirements.

(e) Except in extreme emergencies threatening human life or serious property loss, the air delivery of any person, material or equipment by parachute, helicopter or other means onto project lands or waters without written permission of the District Engineer is prohibited.

(f) In addition to the above provisions, seaplanes, as defined below, are subject to the following restrictions:

(1) Such use is limited to aircraft utilized for water landings and takeoff, herein called seaplanes, at the risk of the owner, operator and passenger(s).

(2) Seaplane operations contrary to the prohibitions or restrictions established by the District Engineer (pursuant to Part 328 of Title 36) are prohibited. The responsibility to ascertain whether seaplane operations are prohibited or restricted is incumbent upon the person(s) contemplating the use of, or using, such waters.

(3) All operations of seaplanes while upon project waters shall be in accordance with marine rules of the road for power boats or vessels and § 327.3 Vessels.

(4) Seaplanes on project waters and lands in excess of 24 hours shall be securely moored at mooring facilities and at locations permitted by the District Engineer. Seaplanes may be temporarily moored on project waters and lands, except in areas prohibited by the District Engineer, for periods less than 24 hours providing that (i) the mooring is safe, secure, and accomplished so as not to damage the rights of the Government or members of the public and (ii) the operator remains in the vicinity of the seaplane and reasonably available to relocate the seaplane if necessary.

(5) Commercial operation of seaplanes from project waters is prohibited without written approval of the District Engineer following consultation with and necessary clearance from the Federal Aviation Administration (FAA) and other appropriate public authorities and affected interests.

(6) Seaplanes may not be operated at Corps projects between sunset and sunrise unless adequate lighting and supervision approved by the District Engineer are available.

§ 327.5 Swimming.

(a) Swimming, diving, snorkling or scuba diving at one's own risk is permitted, except at launching sites, designated mooring points and other areas so designated by the District Engineer. Diving or jumping from bridges or other structures which cross project waters is prohibited.

(b) An international diving flag must be displayed during underwater activities.

§ 327.6 Picnicking.

Picnicking and related day-use activities are permitted, except in those areas where prohibited by the District Engineer.

§ 327.7 Camping.

(a) Camping is permitted only at sites and/or areas designated by the District Engineer.

(b) Camping at one or more campsites at any one water resource project for a period longer than 14 days during any 30-consecutive-day period is prohibited without the written permission of the District Engineer.

(c) The unauthorized placement of camping equipment or other items on a campsite and/or personal appearance without overnight occupancy at a campsite for the purpose of reserving a designated campsite for future occupancy is prohibited.

(d) The digging or leveling of any ground or the construction of any structure without written permission of the District Engineer is prohibited.

§ 327.8 Hunting, fishing, and trapping.

Hunting, fishing, and trapping are permitted except in areas where prohibited by the District Engineer. All

Federal, state and local laws governing these activities apply on project lands and waters, as regulated by authorized enforcement officials.

§ 327.9 Sanitation.

(a) Garbage, trash, rubbish, litter or any other waste material or waste liquid generated on the project and incidental to authorized recreational activities shall be either removed from the project or deposited in receptacles provided for that purpose. The improper disposal of such wastes, human and animal waste included, on the project is prohibited.

(b) It is a violation to bring onto a project any household or commercial garbage, trash, rubbish, debris, dead animals or litter of any kind for disposal or dumping without the written permission of the District Engineer.

(c) The spilling, pumping or other discharge of contaminants, pollutants or other wastes, including, but not limited to, human or animal waste, petroleum, industrial and commercial products and by-products, on project lands or into project waters is prohibited.

(d) Campers, picnickers, and all other persons using a water resource development project shall keep their sites free of trash and litter during the period of occupancy and shall remove all personal equipment and clean their sites upon departure.

(e) The discharge or placing of sewage, galley waste, garbage, refuse, or pollutants into the project waters from any vessel or watercraft is prohibited.

§ 327.10 Fires.

(a) Gasoline and other fuels, except that which is contained in storage tanks of vehicles, vessels, camping equipment, or hand portable containers designed for such purpose, shall not be carried onto or stored on the project without written permission of the District Engineer.

(b) Fires shall be confined to those areas designated by the District Engineer, and shall be contained in fireplaces, grills, or other facilities designated for this purpose. Fires shall not be left unattended and must be completely extinguished prior to departure. The burning of materials that produce toxic fumes, including, but not limited to, tires, plastic or treated wood products is prohibited.

(c) Improper disposal of lighted smoking materials, matches or other burning material is prohibited.

§ 327.11 Control of animals.

(a) No person shall bring or allow dogs, cats, or other pets into developed recreation areas unless penned, caged, on a leash under 6 feet in length, or otherwise physically restrained. No person shall allow animals to impede or restrict otherwise full and free use of project lands and waters by the public. All animals and pets are prohibited in swimming beaches. Animals and pets, except properly trained animals assisting the handicapped (such as seeing-eye dogs), are prohibited in sanitary facilities or other areas so designated by the District Engineer. Unclaimed or unattended animals are subject to immediate impoundment and removal in accordance with state and local laws.

(b) Persons bringing or allowing pets in designated public use areas shall be responsible for proper removal and disposal, in sanitary facilities, of any waste produced by these animals.

(c) No person shall bring or allow horses, cattle, or other livestock in camping, picnicking, swimming or other recreation areas except in areas designated by the District Engineer.

(d) Ranging, grazing, watering or allowing livestock on project lands and waters is prohibited except when authorized by lease, license or other written agreement with the District Engineer.

(e) Unauthorized livestock are subject to impoundment and removal in accordance with Federal, state and local laws.

(f) Any animal impounded under the provisions of this section may be confined at a location designated by the District Engineer, who may assess a reasonable impoundment fee. This fee shall be paid before the impounded animal is returned to its owner(s).

§ 327.12 Restrictions.

(a) The District Engineer may establish and post a schedule of visiting hours and/or restrictions on the public use of a project or portion of a project. The District Engineer may close or restrict the use of a project or portion of a project when necessitated by reason of public health, public safety, maintenance, or other reasons in the public interest. Entering or using a project in a manner which is contrary to the schedule of visiting hours, closures or restrictions is prohibited.

(b) Quiet shall be maintained in all public use areas between the hours of 10 p.m. and 6 a.m., or those hours designated by the District Engineer. Excessive noise during such times which unreasonably disturbs persons is prohibited.

(c) Any act or conduct by any person which interferes with, impedes or disrupts the use of the project or impairs the safety of another person is prohibited. Individuals who are boisterous, rowdy, disorderly or otherwise disturb the peace on project lands or waters may be requested to leave the project.

(d) The operation or use of any audio or other noise producing device including, but not limited to, radios, televisions, or musical instruments and motorized equipment, including vessels or vehicles, in such a manner as to unreasonably annoy or endanger persons at any time or exceed state or local laws governing noise levels from motorized equipment is prohibited.

§ 327.13 Explosives, firearms, other weapons and fireworks.

The possession of loaded firearms, ammunition, loaded projectile firing devices, bows and arrows, crossbows, explosives or explosive devices of any kind, including fireworks, is prohibited unless: (a) In the possession of a Federal, state or local law enforcement officer; (b) being used for hunting or fishing as permitted under § 327.8, with devices being unloaded when transported to, from or between hunting and fishing sites; (c) being used at authorized shooting ranges; or (d) written permission has been received from the District Engineer.

§ 327.14 Public property.

(a) Destruction, injury, defacement, removal or any alteration of public property including, but not limited to, developed facilities, natural formations, mineral deposits, historical and archaeological features, and vegetative growth, is prohibited except when in accordance with written pemission of the District Engineer.

(b) Cutting or gathering of trees or parts of trees and/or the removal of wood from project lands is prohibited without written permission of the District Engineer.

(c) Gathering of dead wood on the ground for use in designated recreation areas as firewood is permitted.

§ 327.15 Abandonment and impoundment of personal property.

(a) Personal property of any kind shall not be abandoned, stored or left unattended upon project lands or waters. After a period of 24 hours, or at any time after a posted closure hour in a public use area, unattended personal property shall be presumed to be abandoned and may be impounded and stored at a storage point designated by the District Engineer, who may assess a reasonable impoundment fee. Such fee shall be paid before the impounded property is returned to its owner.

(b) The District Engineer shall, by public or private sale or otherwise, dispose of all lost, abandoned or unclaimed personal property that comes into Government custody or control. However, property may not be disposed of until diligent effort has been made to find the owner, heirs, next of kin or legal representative(s). If the owner, heirs, next of kin or legal representative(s) are determined but not found, the property may not be disposed of until the expiration of 120 days after the date when notice, giving the time and place of the intended sale or other disposition, has been sent by certified or registered mail to that person at the last known address. When diligent efforts to determine the owner, heirs, next of kin or legal representative(s) are unsuccessful, the property may be disposed of without delay except that if it has a fair market value of $25 or more the property may not be disposed of until 90 days after the date it is received at the storage point designated by the District Engineer. The net proceeds from the sale of property shall be covered into the Treasury of the United States as miscellaneous receipts.

(c) Personal property placed on Federal lands or waters adjacent to a private residence and/or developments of any private nature for more than 24 hours without permssion of the District Engineer shall be presumed to have been abandoned and, unless proven otherwise, such presumption will be sufficient to issue a citation as provided for in § 327.25.

§ 327.16 Lost and found articles.

All articles found shall be deposited by the finder at the Resource Manager's office or with a ranger. All such articles shall be disposed of in accordance with the procedures set forth in § 327.15.

§ 327.17 Advertisement.

Advertising by the use of billboards, signs, markers, audio devices, handbills, circulars, posters, or any other means whatsoever, is prohibited without written permission of the District Engineer. Vessels and vehicles with semipermanent or permanent painted or installed signs are exempt as long as they are used for authorized recreational activities and comply with all other rules and regulations pertaining to vessels and vehicles.

§ 327.18 Commercial activities.

The engaging in or solicitation of business without the express written permission of the District Engineer is prohibited.

§ 327.19 Permits.

(a) It shall be a violation of these regulations to refuse to or fail to comply with the fee requirements or other terms or conditions of any permit issued under the provisions of this Part 327.

(b) Permits for floating structures (issued under the authority of § 327.30) of any kind on/in waters of water resources development projects, whether or not such waters are deemed navigable waters of the United States but where such waters are under the management of the Corps of Engineers, shall be issued at the discretion of the District Engineer under the authority of this regulation. District Engineers will delineate those portions of the navigable waters of the United States where this provision is applicable and post notices of this designation in the vicinity of the appropriate Resource Manager's office.

(c) Permits for nonfloating structures (issued under the authority of § 327.30) of any kind constructed, placed in or affecting waters of water resource development projects where such waters are deemed navigable waters of the U.S. shall be issued under the provisions of section 10 of the Act approved March 3, 1899 (33 U.S.C. 403). If a discharge of dredged or fill material in these waters is involved, a permit is required under section 404 of the Clean Water Act (33 U.S.C. 1344). (See 33 CFR Parts 320-330).

(d) Permits for nonfloating structures (issued under the authority of § 327.30) of any kind in waters of water resource development projects, where such waters are under the management of the Corps of Engineers and where such waters are not deemed navigable waters of the United States shall be issued as set forth in paragraph (b) of this section. If a discharge of dredged or fill material into any water of the United States is involved, a permit is required under Section 404 of the Clean Water Act (33 U.S.C. 1344) (See 33 CFR Parts 320-330). Certification may be required pursuant to section 401 of the Clean Water Act (33 U.S.C. 1341).

§ 327.20 Unauthorized structures.

The construction, placement, or existence of any structure (including, but not limited to, roads, trails, signs or landscape features) of any kind under, upon, in or over the project lands or waters is prohibited unless a permit, lease, license or other appropriate written agreement has been issued by the District Engineer. The design, construction, placement, existence or use of structures in violation of the terms of the permit, lease, license or other written agreement is prohibited. The government shall not be liable for the loss of, or damage to, any private structures, whether authorized or not, placed on project lands or waters. Unauthorized structures are subject to summary removal or impoundment by the District Engineer.

§ 327.21 Special events.

(a) Special events including, but not limited to, water carnivals, boat regattas, music festivals, dramatic presentations or other special recreation programs are prohibited unless written permission has been granted by the District Engineer. An appropriate fee may be charged under the authority of § 327.23.

(b) The public shall not be charged any fee by the sponsor of such event unless the District Engineer has approved in writing (and the sponsor has properly posted) the proposed schedule of fees. The District Engineer shall have authority to revoke permission and require removal of any equipment upon failure of the sponsor to comply with terms and conditions of the permit/permission or the regulations in this Part 327.

§ 327.22 Unauthorized occupation.

(a) Occupying any lands, buildings, vessels or other facilities within water resource development projects for the purpose of maintaining same as a full- or part-time residence without the written permission of the District Engineer is prohibited. The provisions of this section shall not apply to the occupation of lands for the purpsoe of camping, in accordance with the provisions of § 327.7.

(b) Use of project lands or waters for agricultural purposes is prohibited except when in compliance with terms and conditions authorized by lease, license or other written agreement issued by the District Engineer.

§ 327.23 Recreation use fees.

(a) In accordance with 16 USC 4601, the Corps of Engineers is required to collect special recreation use fees and/or special permit fees for the use of specialized sites, facilities, equipment or services related to outdoor recreation furnished at Federal expense.

(b) All use fees shall be fair and equitable and will be based on the following criteria (as contained in the Land and Water Conservation Fund Act of 1965, Pub. L. 88-578, as amended):

(1) The direct and indirect amount of Federal expenditure.

(2) The benefit to the recipient.

(3) The public policy or interest served.

(4) The comparable recreation fees charged by other Federal and non-Federal public agencies and the private sector within the service area of the management unit at which the fee is charged.

(5) The economic and administrative feasibility of fee collection.

(6) The extent of regular maintenance required.

(7) Other pertinent factors.

Based upon the above criteria, it shall be the policy of the Chief of Engineers to publish in the FEDERAL REGISTER, as a general notice document, the established range of fees for specialized sites, facilities, equipment or services whenever such fees are adjusted.

(c) Where such fees are charged, the District Engineer shall insure that clear notice of fee requirements is prominently posted at each area, and at appropriate locations therein and that the notice be included in publications distributed at such areas. Failure to pay authorized recreation use fees as established pursuant to Pub. L. 88-578, 78 Stat. 897, as amended (16 U.S.C. 4601-6a), is prohibited and is punishable by a fine of not more than $100.

(d) Any Golden Age or Golden Access Passport permittee shall be entitled, upon presentation of such a permit, to utilize special recreation facilities at a rate of 50 percent off the established use fee at federally operated areas.

(e) At each Corps lake or reservoir where camping is permitted, the District Engineer will provide at least one primitive campground, containing designated campsites, sanitary facilities and vehicular access, where no fees will be charged.

§ 327.24 Interference with Government employees.

(a) It is a Federal crime pursuant to the provisions of sections 1114 and 111 of Title 18, United States Code, to forcibly assault, resist, oppose, impede, intimidate, or interfere with any civilian official or employee of the U.S. Army Corps of Engineers engaged in the performance of his or her official duties, or on account of the performance of his or her official duties. Such actions or interference directed against a Federal employee while carrying out these regulations are also a violation of these regulations and may be a state crime pursuant to the laws of the state where they occur.

(b) Failure to comply with a lawful order issued by a Federal employee acting pursuant to these regulations shall be considered as interference with that employee while engaged in the performance of their official duties. Such interference with a Federal employee includes failure to provide a correct name, address or other identification upon request of the Federal employee, when that employee is authorized by the District Engineer to issue citations in the performance of the employees official duties.

§ 327.25 Violation of rules and regulations.

(a) Any person who violates the provisions of these regulations, other than for a failure to pay authorized recreation use fees as separately provided for in § 327.23, may be punished by a fine of not more than $500 or imprisonment for not more than six months or both and may be tried and sentenced in accordance with the provisions of section 3401 of Title 18, United States Code. Persons designated by the District Engineer shall have the authority to issue a citation for violation of these regulations, requiring the appearance of any person charged with the violation to appear before the United States Magistrate within whose jurisdiction the affected water resources development project is located. (16 U.S.C. 460d).

(b) Any person who commits an act against any official or employee of the U.S. Army Corps of Engineers that is a crime under the provisions of section 1114 or section 111 of Title 18, United States Code or under provisions of pertinent state law may be tried and sentenced as further provided in Federal or state law, as the case may be.

§ 327.26 State and local laws.

Except as otherwise provided herein or by Federal law or regulation, state and local laws and ordinances shall apply on project lands and waters. This includes, but is not limited to, state and local laws and ordinances governing:

(a) Operation and use of motor vehicles, vessels, and aircraft;

(b) Hunting, fishing and trapping;

(c) Use of firearms or other weapons;

(d) Civil disobedience and criminal acts; and,

(e) Littering, sanitation and pollution.

These state and local laws and ordinances are enforced by those state and local enforcement agencies established and authorized for that purpose.

§§ 327.27—327.29 [Reserved]

§ 327.30 Lakeshore management on civil works projects. [Reserved]

[50 FR 35556, Sept. 3, 1985; 50 FR 46284, Nov. 7, 1985]

PART 328—REGULATION OF SEAPLANE OPERATIONS AT CIVIL WORKS WATER RESOURCE DEVELOPMENT PROJECTS ADMINISTERED BY THE CHIEF OF ENGINEERS

Sec.
328.1 Purpose.
328.2 Applicability.
328.3 References.
328.4 Policy.
328.5 Guidelines for seaplane use of project waters.
328.6 Procedures.
328.7 Other authorities.

AUTHORITY: Sec. 4 of the Act of Dec. 22, 1944, 58 Stat. 889, as amended, (16 U.S.C. 460d).

SOURCE: 42 FR 59076, Nov. 15, 1977, unless otherwise noted.

§ 328.1 Purpose.

This regulation, in connection with the modification of the present prohibition of seaplane operations by the amendment to § 327.4 of Title 36 of the Code of Federal Regulations, is designed to provide uniform policies and criteria for designating Corps projects, or portions thereof, at which seaplane operations are prohibited or restricted; and to continue to protect the integrity and all authorized uses of such projects and the safety of users of such projects. As used in this regulation, "projects" or "Corps projects" means water resources development projects administered by the Chief of Engineers.

§ 328.2 Applicability.

This regulation is applicable to all Field Operating Agencies having Civil Works responsibilities.

§ 328.3 References.

(a) Title 36 CFR, Part 327, Rules and Regulations Governing Public Use of Water Resource Development Projects Administered by the Chief of Engineers (38 FR 7552, March 23, 1973).

(b) ER 1105-2-507.

(c) ER 1130-2-400.

(d) ER 1145-2-301.

(e) ER 1145-2-303.

(f) ER 1165-2-400.

(g) ER 405-2-800 Series.

§ 328.4 Policy.

(a) The objective of Corps of Engineers resources management is to maximize public enjoyment and use of the lands, waters, forests, and associated recreational resources, consistent with their aesthetic and biological values. Such management includes efforts to preserve and enhance the environmental amenities that are the source of the recreational value associated with the project and to allow such other new and innovative uses of the projects that are not detrimental thereto.

(b) Seaplane operations at water resource development projects administered by the Chief of Engineers may involve hazards including, but not limited to, conflicting recreational activities, floating debris, and underwater hazards, which may be accentuated by the normal fluctutations of water levels.

(c) Seaplane operations may be prohibited or restricted at such water resource development projects, or portions thereof, for a variety of management reasons. Prohibiting or restricting seaplane operations in certain portions within a project in no way implies that safety hazards to seaplane operations or to other recreation users may not exist in other portions of such project.

(d) The operation of a seaplane at Corps projects is at the risk of the plane's owner, operator, and passenger(s). The responsibility to ascertain whether seaplane operations are permitted, prohibited or restricted at such projects, and portions thereof, is incumbent upon the person(s) contemplating the use of, or using, such waters.

§ 328.5 Guidelines for seaplane use of project waters.

(a) All operations of the aircraft while upon the water shall be in accordance with the marine rules of the road for power boats or vessels.

(b) Seaplanes on project waters and lands in excess of 24 hours shall be securely moored at mooring facilities and at locations permitted by the District Engineer. Seaplanes may be temporarily moored on project waters and lands, except in areas prohibited by the District Engineer, for periods less than 24 hours providing that (1) the mooring is safe, secure, and accomplished so as not to damage the rights of the government or members of the public and (2) the operator remains in the vicinity of the seaplane and reasonably available to relocate the seaplane if necessary.

(c) No commercial operation of seaplanes from project waters will be allowed without written approval of the District Engineer following consultation with and the necessary clearance from the Federal Aviation Administration (FAA) and other appropriate public authorities and affected interests.

(d) Seaplanes may not be operated at Corps projects between sunset and sunrise unless adequate lighting and supervision are available.

(e) Requests for public commercial facilities in support of seaplanes will be handled under normal concession policies.

(f) Permits for floating and nonfloating structures of any kind, in, on, or affecting project waters, under the management of the Resource Manager, including waters under lease, license or other outgrant agreement, shall be handled in accordance with the lakeshore management plan or policy statement for the project involved, § 327.19 of Title 36, Code of Federal Regulations and, where required by statute or regulation, section 10 of the River and Harbor Act (approved March 3, 1899) and section 404 of the Federal Water Pollution Control Act of 1972 (Pub. L. 92-500).

(g) Appropriate signs should be employed to inform users of projects, or portions thereof, where seaplane operations are permitted.

§ 328.6 Procedures.

(a) In order to protect the integrity and all authorized uses of Corps projects and the safety of all users of the lake projects, the District Engineer shall:

(1) Examine and investigate each Corps project within his district which a seaplane operator could conceivably attempt to use for seaplane operations, and determine those projects, or portions thereof, in which seaplane operations should be prohibited.

(2) Establish such restrictions on seaplane operations as he deems necessary or desirable in accordance with these regulations for other areas. Seaplane takeoff and landing maneuvers within specified distances of the shoreline, bridges, causeways, water utility crossings, dams, and similar structures should be prohibited.

(3) Prior to concluding any such examination and investigation, consult with the FAA, appropriate State aeronautical agency, lessee or licensee of outgranted lands, the Coast Guard, and state boating law administrators, and use his best efforts to consult with other interested or affected public authorities and private interests for their guidance, particularly for those projects which are regularly used by the public for recreational purposes or are located in the vicinity of actively used airports, air fields, or densely populated areas. News releases, public notice, and congressional liaison should be used. Public hearings are encouraged.

(4) In making his investigation, examination, and determination, consider environmental factors in accordance with the National Environmental Policy Act of 1969 (NEPA), Pub. L. 91-190—particularly should he consider the impact that seaplane operations may have on the safety at the project, aquatic, fish and wildlife, noise levels, recreation, and air and water quality. Prior to concluding such investigation and examination, he shall prepare an environmental impact assessment (EIA) and, if necessary, an environmental impact statement (EIS) assessing the environmental impacts of permitting seaplanes to operate at the projects, or portions thereof, in his district.

(5) Place on Corps maps, brochures and otherwise adequately apprise the public and interested agencies of projects, or portions thereof, where seaplane operations are prohibited or restricted. Each map, brochure, or other notice should clearly indicate that operation of a seaplane at Corps projects is at the risk of the plane's owner, operator, and/or passenger(s).

(6) Notify the FAA by letter of projects, or portions thereof, where seaplane operations are prohibited or restricted. The letter should use the words "seaplane operations prohibited," or "seaplane operations restricted," describe the geographical location of such areas as precisely as possible, describe any restrictions, include a telephone number for FAA to contact the District, and be sent to: Federal Aviation Administration, Area Traffic Service, Flight Services Division (AAT-432), 800 Independence Avenue SW., Washington, D.C. 20591.

(b) The removal of the present prohibition on seaplane operations will be effective one year from the date of publication of these regulations. The District Engineer should complete the examination, investigation, determination and notification to the FAA of projects, or portions thereof, where seaplane operations are prohibited or restricted, within one year from the date of this regulation. The District Engineer may extend the present prohibition for up to one additional year if he cannot complete his examination, investigation, determination, and notification within one year. In such event, he should notify the FAA by letter and publish other appropriate notices. Any further extension of time will require the approval of the Chief of Engineers.

(c) After he has completed his examination, investigation, determination and notification of the FAA of projects, or portions thereof where seaplane operations will be prohibited or restricted, The District Engineer should periodically reevaluate his determination as additional operational data becomes available. He may modify, delete, or add projects, or portions thereof, where seaplane operations are prohibited or restricted. Except where immediate action is required, he should consult with appropriate public authorities and private interests for their guidance with regard to such actions. Notification of these actions shall be forwarded to the FAA as indicated in paragraph (a)(6) of this section.

§ 328.7 Other authorities.

Nothing in the preceding provisions bestows authority to deviate from rules and regulations or prescribed standards of the State Aeronautical Agency, Federal Aviation Administration, Coast Guard, or other appropriate Federal, state, or local authority.

PART 330—REGULATION OF LAW ENFORCEMENT SERVICES CONTRACTS AT CIVIL WORKS WATER RESOURCE PROJECTS ADMINISTERED BY THE CHIEF OF ENGINEERS

Sec.
330.1 Purpose.
330.2 Applicability.
330.3 References.
330.4 General.
330.5 Policy.
330.6 Criteria.
330.7 Funding.
330.8 Annual report.

AUTHORITY: Sec. 120 of the Water Resource Development Act of 1976, 90 Stat. 2917.

SOURCE: 42 FR 61986, Dec. 8, 1977, unless otherwise noted.

§ 330.1 Purpose.

This regulation provides policy and guidance for the establishment and management of the contract law enforcement program including preparation of and management of contracts ensuing from this program.

§ 330.2 Applicability.

This regulation is applicable to all field operating agencies having responsibilities for Civil Works water resource development projects.

§ 330.3 References.

(a) Section 4 of the Flood Control Act of 1944, as amended (16 U.S.C. 460d).

(b) Section 234 of the River and Harbor and Flood Control Act of 1970 (Pub. L. 91-611, 84 Stat. 1818).

(c) Section 120 of the Water Resource Development Act of 1976 (Pub. L. 94-587, 90 Stat. 2917).

(d) 36 CFR Chapter III.

(e) ER 190-2-3.

(f) ER 190-3-4.

§ 330.4 General.

(a) Section 120(a) of reference § 330.3(c) authorizes the Secretary of the Army, acting through the Chief of Engineers, to contract with States and their political subdivisions for the purpose of obtaining increased law enforcement services at water resource development projects under the jurisdiction of the Secretary of the Army to meet needs during peak visitation periods.

(b) Further, section 120(b) of the Act authorizes a maximum appropriation of up to $6,000,000 per fiscal year for the fiscal years ending 30 September 1978 and 30 September 1979, to carry out section 120(a).

§ 330.5 Policy.

(a) It is the policy of the Corps of Engineers to provide, to the extent of its authorities, a safe and healthful environment for public use of lands and waters at Civil Works water resource development projects. To insure this safe and healthful environment, and to augment the citation authorities granted to the Corps of Engineers by reference § 330.3(b), District Engineers, subject to the authority of the Division Engineers, as set out below, are hereby delegated the authority to contract with States or their political subdivisions to obtain increased law enforcement services at Civil Works water resource development projects. Division Engineers are hereby delegated the authority to approve any minor deviations from this regulation except that any substantial deviations from the policies expressed within this regulation will require the prior approval of the Chief of Engineers or his authorized representative. Any required approval for deviation shall be made prior to the execution of the contract. When fiscal year 1978 and fiscal year 1979 work allowances are issued, instructions will be furnished on reporting requirements and the control of expenditures.

(b) Contracts for law enforcement services, as authorized in § 330.5(a), shall be subject to the terms and conditions as provided for within this regulation and in accordance with standard contracting and accounting procedures applicable to the Corps of Engineers.

(c) This regulation is not intended to diminish or otherwise limit the existing law enforcement responsibilities of the State or local law enforcement agencies.

(d) Contract law enforcement personnel shall not be given Federal citation authority for enforcement of regulations contained in Title 36 of the Code of Federal Regulations, Chapter III nor shall they be empowered to enforce such regulations. These regulations shall remain the responsibility of the Corps of Engineers.

(e) Contracts for increased law enforcement shall be for those projects or portions of projects that are operated and maintained by the Corps of Engineers. Law enforcement services will not be provided under this program to those outgrant areas operated and maintained by a non-Federal sponsor.

§ 330.6 Criteria.

(a) In order to provide reimbursement for law enforcement services supplied by a State or local law enforcement agency, a contract must be executed and approved in accordance with this regulation prior to the provisions of such services.

(b) The authorized contract law enforcement program extends only to 30 September 1979. Law enforcement services acquired by contract under this program shall be limited to those increased law enforcement services required to meet the needs of the public during peak visitation periods. Accordingly, the contract period shall not extend beyond the dates of 1 April through 30 September inclusive, and in no event shall the contract be written for more than 120 days within that time period. The contract may provide for an option to renew for a similar, additional period not to exceed 120-day period in Fiscal Year 1979. Any exceptions to this criteria must be approved by the Chief of Engineers or his authorized representative.

(c) Contracts shall be consummated only with those public law enforcement agencies legally empowered to enforce State and local criminal and civil laws within their respective political jurisdictions. In light of this requirement and the authority cited in § 330.3(c), it is recognized that sole source negotiations may necessarily be utilized in the procurement of these services. In negotiating law enforcement contracts with these agencies the District Engineer must determine the reasonableness of the price for the law enforcement services offered under the contract. Such a determination shall be made prior to execution of the contract, in accordance with the applicable Contract Cost Principles and Procedures as set out in ASPR, section 15, Part 7, and as subject to the policies contained in this regulation. Such a determination shall be contained in the official contract file and must accompany any requests for deviations from the Division Engineer or Chief of Engineers as provided for in § 330.5(a) of this regulation. Contract law enforcement personnel must meet all the qualifications, including minimal law enforcement training, required by State and local laws and regulations.

(d) The contractor shall provide all personnel, equipment and supplies which are required to provide the increased law enforcement services contracted for by the District Engineer. The Corps of Engineers shall not reimburse the contractor for the purchase of any equipment or supplies desired by the contractor for use under this program. However, the Corps of Engineers shall reimburse the contractor for the reasonable costs incurred by him in the rental or use of such equipment which is allocated to the work performed by him under the contract. Such use shall include: (1) A depreciation or use allowance for such equipment as determined by the service life evaluation system used by the contractor, and (2) the costs of necessary maintenance, repair, and upkeep of the property which neither adds to the permanent value of the property nor appreciably prolongs its intended life, but keeps it at an efficient operating condition.

(e) Reimbursement for law enforcement services shall be considered only for increased law enforcement services to meet needs during peak visitation periods. Each District Engineer shall evaluate and establish a normal law enforcement service standard for each contract situation and include such standard in the plan of operation to be developed in accordance with § 330.6(h). Each District Engineer shall evaluate the existing law enforcement services now being provided by State or local law enforcement agencies at those water resources projects or recreation areas where it is anticipated that law enforcement service contracts may be executed, and determine the scope including the type and amount, of law enforcement service which exceeds the normal law enforcement standard, and which will become eligible for reimbursement under the contract. Normally, requests by the District Engineer or his authorized representative for emergency or unanticipated law enforcement assistance will be considered nonreimbursable. Increased law enforcement services, eligible for reimbursement under the terms of the contract, shall be those regularly scheduled patrols or surveillance in excess of the normal law enforcement standard presently being provided by the contractor.

(f) An appropriate orientation program will be given by Corps personnel to all contract law enforcement personnel assigned to Corps projects. The purpose of this orientation will be to familiarize the contract law enforcement personnel with the policies and procedures of the Corps of Engineers, and to familiarize Corps personnel with the functions and duties of the State or local law enforcement agency. The Corps of Engineers shall reimburse the contractor for the cost per man hour as set out in § 330.6(h)(4) for attending the orientation program.

(g) The contractor shall be required to keep a record of the services provided to the District under the terms and conditions of the contract in accordance with the criteria established in the plan of operation required in § 330.6(h).

(h) The District Engineer, in cooperation with the Contractor, shall prepare a Plan of Operation for the Provision of law enforcement services as an attachment to the contract. The Plan of Operation shall contain, but not necessarily be limited to, the following information:

(1) Identify, by name and location, the project or projects and specific areas (recreation and others) that require law enforcement services.

(2) Describe the normal law enforcement services to be provided by the Contractor without reimbursement by the Government (see § 330.6(e)). Identify time of day, number of hours-per-day number of days-per-week, and the number of patrols.

(3) Describe the increased law enforcement services to be provided by the Contractor under the contract. Identify the time-of-day, number of hours-per-day, number of days-per-week, number of patrols, manpower

per patrol, and effective starting and ending dates.

(4) Identify the cost-per-man-hour for the provision of reimbursable law enforcement services, and identify the costs for utilization and operation, maintenance and repair of such equipment as allocated for use under the contract. (See § 330.6(d).)

(5) The District Engineer and the Contractor should designate specific individuals to issue or receive requests for reimbursable law enforcement services under the contract.

(6) Describe the billing procedures to be utilized for the increased law enforcement services. The Contractor shall provide, at a minimum, the total charges, the number of hours involved, and starting and ending dates of the billing period.

(7) The Contractor shall prepare a Daily Law Enforcement Log (see § 330.6(g) for the law enforcement services rendered as specified in § 330.6(h)(3)). These logs shall be compiled by the Contractor and submitted to the District Engineer or his designated representative on a regular basis throughout the life of the contract. It is intended by this reporting requirement to minimize the paperwork burden on behalf of the Contractor while, at the same time, providing assurance to the Government with an adequate information base on which to administer the law enforcement services being provided under the contract. Any requirement for additional information to be contained in these reports due to unique or special circumstances encountered in negotiating a Plan of Operation with a particular law enforcement jurisdiction must receive the prior approval of the Division Engineer.

§ 330.7 Funding.

(a) Section 330.3(c) sets forth the maximum authorized funds for law enforcement contracting in FY 1978 and FY 1979. The Division funding levels for FY 1978 are based on information as previously submitted.

(b) The FY 1979 funding request for law enforcement contracting will be submitted as part of the FY 1979 budget submittal.

§ 330.8 Annual report.

(RCS-DAEN-CWO-53) The Division Engineer will submit a consolidated annual report to reach HQDA (DAEN-CWO-R) WASH DC 20314 not later than 30 October. This requirement expires 30 October 1979. The report will contain the following:

(a) Districts reporting.

(b) Number assigned each contract.

(c) Name of projects covered under each contract.

(d) Number of man-hours of increased law enforcement services provided under each contract.

(e) Total contract cost.

(f) Cost per man-hour for each contract.

(g) Corps of Engineers administrative or overhead costs associated with each contract.

(h) Number of arrests and type of offense committed, i.e., assault, burglary, auto theft, etc.

(i) The Division Engineers assessment of the effects of the contract law enforcement program and recommendation.

PART 331—REGULATIONS GOVERNING THE PROTECTION, USE AND MANAGEMENT OF THE FALLS OF THE OHIO NATIONAL WILDLIFE CONSERVATION AREA, KENTUCKY AND INDIANA

Sec.
331.1 Applicability and scope.
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331.21 Unauthorized structures.
331.22 Abandonment of personal property.
331.23 Control of animals.
331.24 Permits.
331.25 Violation of regulations.

AUTHORITY: Pub. L. 97-137.

SOURCE: 48 FR 40720, Sept. 9, 1983, unless otherwise noted.

§ 331.1 Applicability and scope.

(a) The regulations contained in this part apply to those lands and waters within the established boundary of the Falls of the Ohio National Wildlife Conservation Area (WCA). Included in this boundary, which was published in the FEDERAL REGISTER of August 12, 1982, are publicly and privately owned lands, waters and improvements. The Federal Government, acting through the Corps of Engineers, will acquire such rights to privately-owned properties in the WCA as are necessary to carry out the purposes of Title II, Pub. L. 97-137. The regulations prescribed herein are for the use, management and protection of the resources of the WCA and all persons entering, using or visiting within the boundaries of the WCA are subject to these regulations. All other applicable Federal, State and local laws and regulations remain in full force and effect. The District Engineer, US Army Corps of Engineers, exercises non-exclusive jurisdiction over the lands and waters of the WCA and enforces these regulations.

(b) The WCA boundary encompasses an existing hydroelectric generating station and the McAlpine Locks and Dam, operating navigation structures which are part of the authorized Ohio River Navigation System. The continued operation and maintenance of this system take precedence over the purposes of the WCA, except that such operation and maintenance will be consistent with the basic purpose of the WCA as regards prohibition of hunting, vandalism, and dumping of refuse. Management of the WCA to achieve its intended purposes will, to the extent practicable, be accomplished in a manner consistent and compatible with continued generation of electricity and navigation on the Ohio River, including operation and maintenance of the McAlpine Locks and Dam and the Louisville Repair Station and material storage areas located on Shippingport Island.

§ 331.2 Policy

(a) It is the policy of the Secretary of the Army, acting through the Chief of Engineers, to manage the natural and cultural resources of the WCA in the public interest, providing the public with safe and healthful recreational opportunities while protecting and enhancing these resources.

(b) Unless otherwise indicated herein, the term "District Engineer" shall include the authorized representatives of the District Engineer.

(c) The WCA shall be available to the public without regard to sex, race, color, creed or national origin. No lessee, licensee or concessionaire providing a service to the public shall discriminate against any person because of sex, race, creed, color, or national origin in the conduct of the operations under the lease, license, or concession contract.

§ 331.3 Hunting and trapping.

Unless authorized in writing by the District Engineer:

(a) The hunting, trapping, catching, molesting, killing, or having in possession any wild animal or bird, or taking the eggs of any such bird, is prohibited.

(b) Possession of equipment (including, but not limited to, firearms, ammunition, traps, projectile firing devices including bow and arrow) which could be used for hunting, trapping, or the taking of wildlife, is prohibited.

§ 331.4 Fishing.

Unless otherwise authorized in writing by the District Engineer:

(a) Fishing is only permitted in accordance with the laws and regulations of the State within whose exterior boundaries that portion of the WCA is located, and such laws and regulations which are now or may hereafter be in effect are hereby adopted as part of these regulations.

(b) Fishing by means of the use of drugs, poisons, explosives, bow and arrow or electricity is prohibited.

(c) Commercial fishing and fishing with gill nets, trammel nets, hoop nets, bow and arrow or trot lines is prohibited.

§ 331.5 Explosives and fireworks.

Unless otherwise authorized in writing by the District Engineer.

(a) The possession or use of fireworks is prohibited.

(b) The possession or use of explosives is prohibited.

§ 331.6 Public property.

Unless otherwise authorized in writing by the District Engineer, the destruction, injury, defacement, removal, or any alteration of public property including, but not limited to natural formations, paleontological features, historical and archaeological features and vegetative growth is prohibited. Any such destruction, removal, or alteration of public property shall be in accordance with the conditions of any permission granted.

§ 331.7 Sanitation.

(a) Garbage, trash, rubbish, litter, or any other waste material or waste liquid generated on the WCA shall be removed from the area or deposited in receptacles provided for that purpose. The improper disposal of such wastes within the boundaries of the WCA is prohibited.

(b) The use of refuse containers for the disposal of refuse not generated on the WCA is prohibited.

(c) It is a violation to bring any material onto the WCA for the purpose of disposal.

(d) The discharge or placing of sewage, galley waste, garbage, refuse or pollutants into the WCA waters from any vessel or watercraft is prohibited.

§ 331.8 Picnicking.

(a) Picnicking is permitted only in designated areas.

(b) Picnickers shall remove all personal equipment and clean their sites upon departure.

§ 331.9 Camping.

Camping is not permitted within the WCA.

§ 331.10 Swimming.

Swimming is prohibited unless authorized in writing by the District Engineer.

§ 331.11 Special events.

(a) Special events including, but not limited to, water carnivals, boat regattas, music festivals, dramatic presentations, or other special recreation programs are prohibited unless written permission has been granted by the District Engineer.

(b) The public shall not be charged any fee by the sponsor of such permitted event unless the District Engineer has approved in writing the proposed schedule of fees. The District Engineer shall have authority to revoke permission and require removal of any equipment upon failure of the sponsor to comply with terms and conditions of the permit/permission. Any violation shall constitute a separate violation for each calendar day in which it occurs.

§ 331.12 Vehicles.

(a) The use of a vehicle off roadways is prohibited except as may be authorized by the District Engineer.

(b) Vehicles shall not be parked in violation of any posted restriction, or in such a manner as to endanger any Federal property to include natural features. The owner of any vehicle parked in violation of this section shall be presumed to have parked it, and unless rebutted such presumption will be sufficient to sustain a conviction as provided for in § 331.25.

(c) Vehicles shall be operated in accordance with all posted regulations.

(d) Driving or operating any vehicle in a careless, negligent, or reckless manner, heedlessly or in willful disregard for the safety of other persons, or in such manner as to endanger any property or environmental feature, or without due care or at a speed greater than is reasonable and prudent under prevailing conditions with regard to traffic, weather, road, light and surface conditions, is prohibited.

(e) This section pertains to all vehicles, including, but not limited to, automobiles, trucks, motorcycles, minibikes, trail bikes, snowmobiles, dune buggies, all terrain vehicles, bicycles, trailers, campers, or any other such equipment.

(f) Except as authorized by the District Engineer, no person shall operate any motorized vehicle without a proper and effective exhaust muffler, or with an exhaust muffler cutout open, or in any other manner which renders the exhaust muffler ineffective in muffling the sound of engine exhaust.

§ 331.13 Vessels.

(a) Vessels or other watercraft may be operated in the WCA waters except in prohibited or restricted areas in accordance with posted regulations and applicable Federal, State and local laws.

(b) All vessels when not in actual use shall be removed from the WCA unless securely moored at mooring facilities approved by the District Engineer. The placing of floating or stationary mooring facilities to, or interfering with, a buoy, channel marker, or other navigational aid is prohibited.

(c) The operation of vessels or other watercraft in a careless, negligent, or reckless manner so as to endanger any property (including the operator and/or user(s) of the vessel or watercraft) is prohibited.

§ 331.14 Aircraft.

(a) The operation of aircraft on WCA lands and waters is prohibited, unless authorized in writing by the District Engineer.

(b) Except in extreme emergencies threatening human life or serious property loss, the air delivery of any person or thing by parachute, helicopter, or other means onto project lands or waters without written permission of the District Engineer is prohibited.

(c) The provisions of this section shall not be applicable to aircraft engaged on official business of the Federal Government or used in emergency rescue in accordance with the directions of the District Engineer.

§ 331.15 Fires.

Open fires are prohibited unless confined to fireplaces, grills, or other facilities designed for this purpose as designated by the District Engineer. Fires shall not be left unattended and must be completely extinguished prior to departure.

§ 331.16 Interference with government employees.

Interference with any Government employee in the conduct of his or her official duties pertaining to the administration of these regulations is prohibited. It is a violation to fail to comply with a lawful order directed by any Government employee or to knowingly give any false, fictitious, or fraudulent report or other information to any government employee in the performance of his or her official duties pertaining to the administration of these regulations.

§ 331.17 Minerals.

All activities in connection with prospecting, exploration, development, mining or other removal or the processing of mineral resources and all uses reasonably incident thereto are prohibited.

§ 331.18 Restrictions.

The District Engineer may establish and post a schedule of visiting hours and/or restrictions on the public use of a portion or portions of the WCA. The District Engineer may close or restrict the use of the WCA or portion of the WCA when necessitated by reason of public health, public safety, security, maintenance, or other reasons in the public interest. Entering or using the project in a manner which is contrary to the schedule of visiting hours, closure or restrictions is prohibited.

§ 331.19 Commercial activities.

Unless otherwise authorized in writing by the District Engineer, the engaging in or solicitation of business or money is prohibited.

§ 331.20 Advertisement.

Unless otherwise authorized in writing by the District Engineer, advertising by the use of billboards, signs, markers, audio devices, or any other means whatsoever including handbills, circulars, and posters is prohibited. Vessels or vehicles with semipermanent or permanently installed signs are exempt if being used for authorized recreational activities or special events and in compliance with all other rules and regulations pertaining to vessels and vehicles.

§ 331.21 Unauthorized structures.

The construction, placing, or continued existence of any structure of any kind under, upon, in, or over WCA lands or waters is prohibited unless a permit, lease, license, or other appropriate written agreement therefor has been issued by the District Engineer. Structures not so authorized are subject to summary removal or impoundment by the District Engineer. The design, construction, placing, existence, or use of structures in violation of the terms of the permit, lease, license, or other written agreement therefor is prohibited.

§ 331.22 Abandonment of personal property.

(a) Personal property of any kind left unattended upon WCA lands or waters for a period of 24 hours shall be considered abandoned and may be impounded and stored at a storage point designated by the District Engineer who may assess a reasonable impoundment fee. Such fee shall be paid before the impounded property is returned to its owner.

(b) If abandoned property is not claimed by its owner within 3 months after the date it is received at the storage point designated by the District Engineer, it may be disposed of by public or private sale or by other means determined by the District Engineer. Any net proceeds from the sale of property shall be conveyed unto the Treasury of the United States as miscellaneous receipts.

§ 331.23 Control of animals.

(a) Nc person shall bring or allow horses, cattle, or other livestock in the WCA.

(b) No person shall bring dogs, cats, or other pets into the WCA unless penned, caged, or on a leash under 6 feet in length, or otherwise under physical restraint at all times. Unclaimed or unattended animals are subject to immediate impoundment and removal in accordance with State and local laws.

§ 331.24 Permits.

It shall be a violation of these regulations to refuse to or fail to comply with the terms or conditions of any permit isued by the District Engineer.

§ 331.25 Violation of regulations.

Anyone violating the provisions of this regulation shall be subject to a fine of not more than $500 or imprisonment for not more than 6 months, or both. All persons designated by the Chief of Engineers, U.S. Army Corps of Engineers, for that purpose shall have the authority to issue a citation for the violation of these regulations, requiring the appearance of any person charged with violation to appear before the U.S. Magistrate within whose jurisdiction the violation occurred.

CHAPTER IV—AMERICAN BATTLE MONUMENTS COMMISSION

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PART 400—EMPLOYEE RESPONSIBILITIES AND CONDUCT

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AUTHORITY: E.O. 11222, 30 FR 6469, 3 CFR 1965 Supp.; 5 CFR 735.101 et seq.

SOURCE: 33 FR 15379, Oct. 17, 1968, unless otherwise noted.

§ 400.735–1 Adoption of regulations.

Pursuant to 5 CFR 735.104(f), the American Battle Monuments Commission (referred to hereinafter as the agency) hereby adopts the following sections of Part 735 of Title 5, Code of Federal Regulations: §§ 735.101, 735.102, 735.201a, 735.202 (a), (d), (e), (f), 735.210, 735.302, 735.303(a), 735.304, 735.305(a), 735.403(a), 735.404, 735.405, 735.407—735.411, 735.412 (b) and (d). These adopted sections are modified and supplemented as set forth in this part.

§ 400.735–2 Review of statements of employment and financial interests.

Each statement of employment and financial interests submitted under this part shall be reviewed by the Officer in Charge, U.S. Office, except those of the Officer in Charge, U.S. Office, and the Secretary, American Battle Monuments Commission. The statement of the Officer in Charge, U.S. Office, shall be reviewed by the Secretary of the American Battle Monuments Commission. The statement of the Secretary, American Battle Monuments Commission, shall be reviewed by the Chairman of the Agency. When a review indicates a conflict between the interests of an employee or special Government employee of the agency and the performance of his services for the Government, the reviewer shall have the indicated conflict brought to the attention of the employee or special Government employee, grant the employee or special Government employee an opportunity to explain the indicated conflict, and attempt to resolve the indicated conflict. If the indicated conflict cannot be resolved, the reviewer shall forward a written report on the indicated conflict to the Chairman, American Battle Monuments Commission, through the counselor for the agency designated under 5 CFR 735.105(a).

§ 400.735–3 Disciplinary and other remedial action.

An employee or special Government employee of the agency who violates any of the regulations in this part or adopted under § 400.735–1 may be disciplined. The disciplinary action may be in addition to any penalty prescribed by law for the violation. In addition to or in lieu of disciplinary action, remedial action to end conflicts or appearance of conflicts of interest may include but is not limited to:

(a) Changes in assigned duties;

(b) Divestment by the employee or special Government employee of his conflicting interest; or

(c) Disqualification for a particular assignment.

§ 400.735–4 Gifts, entertainment, and favors.

The agency authorizes the exceptions to 5 CFR 735.202(a) set forth in 5 CFR 735.202(b) (1)-(4).

§ 400.735–5 Outside employment and other activity.

An employee of the agency may engage in outside employment or other outside activity not incompatible with the full and proper discharge of the duties and responsibilities of his Government employment. An employee who engages in outside employment shall report that fact in writing to his supervisor.

§ 400.735-6 Specific provisions of agency regulations governing special Government employees.

(a) Special Government employees of the agency shall adhere to the standards of conduct applicable to employees as set forth in this part and adopted under § 400.735-1, except 5 CFR 735.203(b).

(b) Special Government employees of the agency may teach, lecture, or write in a manner not inconsistent with 5 CFR 735.203(c).

(c) Pursuant to 5 CFR 735.305(b), the agency authorizes the same exceptions concerning gifts, entertainment, and favors for special Government employees as are authorized for employees by § 400.735-4.

§ 400.735-7 Statements of employment and financial interests.

(a) In addition to the employees required to submit statements of employment and financial interests under 5 CFR 735.403(a), employees in the following named positions shall submit statements of employment and financial interests:

(1) Secretary;
(2) Officer in Charge, U.S. Office;
(3) Officer in Charge, European Office;
(4) Chief Maintenance Division, European Office;
(5) Chief Purchasing and Contracting Branch, European Office;
(6) Officer in Charge, Mediterranean Office;
(7) Superintendent, Manila American Cemetery.

(b) Each statement of employment and financial interests required by this section shall be submitted to:

American Battle Monuments Commission
2018 Munitions Building, Washington, D.C. 20360. Attention: Officer in Charge.

Statements shall be submitted in double sealed envelopes, and the inner envelope shall be annotated with the words: "Statement of Employment and Financial Interests—Attention: Officer in Charge."

(c) An employee who believes that his position has been improperly included in this section as one requiring the submission of a statement of employment and financial interests may obtain a review of his complaint under the agency's grievance procedure.

§ 406.735-8 Supplementary statements.

Notwithstanding the filing of the annual supplementary statement required by 5 CFR 735.406, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflicts-of-interest provisions of section 208 of Title 18, United States Code or the regulations in this part or adopted under § 400.735-1.

PART 401—PROCEDURES

AUTHORITY: Sec. 3, 70 Stat. 640, 641; 5 U.S.C. 132 note, 36 U.S.C. 123-125; E.O. 6614, E.O. 9704, 11 FR 2675, 3 CFR 1949-53 Comp., p. 519, E.O. 10057, 10087, 14 FR 2585, 7287, 3 CFR 1949-1953 Comp., pp. 269, 285.

§ 401.1 Erection of war memorials outside continental limits of United States.

Federal Government agencies, American citizens, States, municipalities, or associations desiring to erect war memorials outside the continental limits of the United States should proceed as follows:

(a) Submit general idea of the memorial to the American Battle Monuments Commission, with a request for the tentative allocation of the site desired.

(b) When site is provisionally allocated, prepare and submit the design of the memorial, together with the inscription, for approval. The design of the memorial will then be referred, in accordance with law, by the Commission to the National Commission of Fine Arts for its approval.

(c) After a site is allocated and the design and inscription are approved, the American Battle Monuments Commission will, if the sponsors so desire, consult with the foreign government concerning the question of securing approval for the erection of the memorial.

(d) When the approval of the foreign government is obtained, the Commission will cooperate, if the sponsors so desire, in obtaining the ground and erection of the memorial. Such cooperation may include construction of the memorial by the Commission, using funds provided by the sponsors, in which case user charges will be made in accordance with general Government policy.

[35 FR 19666, Dec. 29, 1970]

PART 402—ERECTION OF WAR MEMORIALS IN FOREIGN COUNTRIES BY AMERICAN CITIZENS, STATES, MUNICIPALITIES, OR ASSOCIATIONS

AUTHORITY: Sec. 3, 70 Stat. 640, 641; 5 U.S.C. 132 note, 36 U.S.C. 123, 125; E.O. 6614, E.O. 9704, 11 FR 2675, 3 CFR 1943-1948 Comp., p. 519, E.O. 10057, 10087, 14 FR 2585, 7287, 3 CFR, 1949-1953 Comp., pp. 269, 285.

§ 402.1 Restrictions on erection.

(a) No administrative agency of the United States shall give assistance to American citizens, States, municipalities, or associations in erecting any war memorial outside the continental United States unless the plan has been approved in accordance with § 401.1 above.

(b) It is the opinion of the Commission that no battlefield memorial should be erected to any unit smaller than a division or comparable unit or to an individual, unless the services of such unit or individual clearly were of such distinguished character as to warrant a separate memorial.

(c) It is the opinion of the Commission that, as a general rule, memorials should be erected to organizations rather than to troops from a particular locality of the United States.

(d) The policy of the Commission is to approve plans for memorials in foreign countries only in cases in which the sponsors make adequate and permanent arrangements for their maintenance. If the sponsors so desire, the Commission will maintain such memorials, including those previously existing which it deems worthy of preservation, using funds provided by the sponsors; in such cases it will make user charges in accordance with general Government policy.

[35 FR 19666, Dec. 29, 1970]

PART 403—ERECTION OF MEMORIAL MONUMENTS, BUILDINGS, AND HEADSTONES IN AMERICAN CEMETERIES LOCATED OUTSIDE THE UNITED STATES AND ITS TERRITORIES AND POSSESSIONS

AUTHORITY: Sec. 3, 70 Stat. 641; 36 U.S.C. 123; E.O. 6614, Feb. 26, 1934; E.O. 9704, 3 CFR, 1943-1948 Comp., 519; E.O. 10057, 10087, 3 CFR 1949-1953 Comp., pp. 269, 285.

§ 403.1 Restrictions on erection.

(a) No memorial monuments or buildings shall be placed in these cemeteries unless the design and site have been approved by the American Battle Monuments Commission. No steps toward the erection of any memorial monument or building in these cemeteries should be taken until the idea has first been approved by the American Battle Monuments Commission.

(b) There shall be no variation in the types of headstones officially adopted for use in American cemeteries located outside the United States and its Territories and possessions.

[13 FR 6812, Nov. 19, 1948, as amended at 23 FR 9780, Dec. 19, 1958]

PART 404—PROCEDURES AND GUIDELINES FOR COMPLIANCE WITH THE FREEDOM OF INFORMATION ACT

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404.10 Maintenance of statistics.

AUTHORITY: 5 U.S.C. 552.

SOURCE: 53 FR 120, Jan. 5, 1988, unless otherwise noted.

§ 404.1 Purpose.

These guidelines prescribe procedures to obtain information and records of the American Battle Monuments Commission under the Freedom of Information Act of 1986, 5 U.S.C. 552(a)(4)(A)(i). This act requires each agency to promulgate regulations that specify the schedule of fees for processing FOIA requests and the guidelines when fees may be waived. It applies only to records and information of the Commission which are in the Commission's custody.

§ 404.2 General policy.

Public requests for information from the records of the American Battle Monuments Commission should be sent to the Freedom of Information Representative, American Battle Monuments Commission, Room 5127, Casimir Pulaski Building, 20 Massachusetts Ave., NW., Washington, DC 20314. They may also be sent to its field offices at the addresses listed below:

(a) Officer-in-Charge, European Office, American Battle Monuments Commission, APO New York 09777.

(b) Officer-in-Charge, Mediterranean Office, American Battle Monuments Commission, APO New York 09794.

(c) Superintendent, Manila American Cemetery, FPO San Francisco 96528.

(d) Superintendent, Corozal American Cemetery, The American Battle Monuments Commission, Attn: APZU-AG-CRB, Drawer #38, APO Miami, FL 34004-5000.

(e) Superintendent, Mexico City National Cemetery, American Battle Monuments Commission, c/o U.S. Embassy, Mexico, P.O. Box 3087, Laredo, TX 78044-3087.

§ 404.3 Response to requests.

(a) Except for records and information exempted from disclosure by 5 U.S.C. 552(a)(1), all records of the Commission or in its custody are available to any person who requests them.

(b) Requests for information from the public will be honored within ten working days unless the confidentiality of such information is protected by law, or when it is necessary to search and/or collect records in separate offices or another office of the Commission, which would usually require more than ten working days.

(c) Whenever information cannot be dispatched within ten work days after receipt of request, an interim reply will be sent informing the requester of the status of the request.

(d) The records of the ABMC may be examined and copied between the hours of 8:00 a.m. and 3:30 p.m., Monday through Friday under the supervision of the Freedom of Information representative.

§ 404.4 Denial of access.

(a) Letters denying confidential information will be dispatched within ten working days of receipt of the request and will be signed by one of the below listed personnel:

(1) Officer-in-Charge, ABMC European Office.

(2) Officer-in-Charge, ABMC Mediterranean Office.

(3) Directors, ABMC Washington Office.

(4) Secretary, ABMC.

(b) Letters denying access to information will:

(1) Provide the requester with the reason for denial,

(2) Inform the requester of his or her right to appeal the denial within 30 days,

(3) Give the name of the official to whom the appeal may be sent.

(c) If an unusual circumstance delays a decision concerning access to information, the requester will be informed of the delay within ten working days of the request's initial receipt. In no case will the decision be delayed more than 20 working days from initial receipt of the request.

(d) A copy of each denial of information will be furnished to the Secretary, ABMC at the time of its dispatch.

§ 404.5 Appeals.

(a) The Secretary is the appellate authority for all denials except those which he authors. The Chairman is the appellate authority for denials authored by the Secretary.

(b) The requester will be informed of the decision on his or her appeal within 20 working days after its receipt. If the denial is upheld, the requester will be advised that there are provisions for judicial review of such

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decisions under the Freedom of Information Act.

(c) In the event a court finds that the American Battle Monuments Commission has arbitrarily and capriciously withheld information from the public and a subsequent Office of Personnel Management investigation finds agency personnel responsible, these personnel will be subject to disciplinary action by the American Battle Monuments Commission.

§ 404.6 Fees to be charged.

While most information will be furnished promptly at no cost as a service to the general public, fees will be charged if the cost of search and duplication warrants. In those instances where ABMC deems it necessary to charge a fee, ABMC shall use the most efficient and least costly methods to comply with requests for documents, drawings, photographs, and any other materials made available under the FOIA. The Freedom of Information Representative shall charge the fees stated in paragraphs (a) through (g) of this section. The Freedom of Information Representative shall, however, waive the fees in the circumstances stated in § 404.9. The specific fees which ABMC shall charge the requester when so required by the FOIA are as follows:

(a) *Manual searches of records.* $9.00 per hour for clerical personnel; $15.00 per hour for supervisory personnel.

(b) *Computer searches for records.* Fees for searches of computerized records shall be the actual cost to the Commission but shall not exceed $12.00 per hour. This fee includes machine time and that of the operator and clerical personnel. The fee for computer printouts shall be $.40 per page. The word "page" refers to paper copies of standard computer size, which normally are 11 x 15 inches.

(c) *Copying fee.* The machine copy fee for each page up to 8½ x 14 shall be $.25 per page. Copying fees shall not be charged for the first 100 pages of copies unless the copies are requested for commercial purposes.

(d) $2.00 for each 8 x 10 inch black and white photograph.

(e) $3.00 for each 8 x 10 inch color photograph.

(f) $1.75 per cemetery booklet.

(g) $1.50 per lithograph.

§ 404.7 Assessment and collection of fees.

(a) *Assessment of fees.* (1) ABMC shall assess interest charges on an unpaid bill starting on the 31st day following the day on which the billing was dispatched. Once the fee has been received by ABMC, even if not processed, accrual of interest will cease. Interest will be at the rate prescribed in section 3717 of Title 31 of the United States Code and will accrue from the date billing is sent.

(2) *Charges for unsuccessful searches.* If ABMC estimates that charges for an unsuccessful search may exceed $10.00, it shall so inform the requester unless the requester has indicated in advance a willingness to pay fees as high as those anticipated. Such notice shall offer the requester the opportunity to confer with agency personnel with the object of reformulating the request to meet the requester's needs at a lower cost. Dispatch of such a notice shall temporarily suspend the ten day period for response by ABMC until a reply is received from the requester.

(3) *Aggregating requests.* Except for requests that are for a commercial use, ABMC shall not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When ABMC believes that a group of requesters are acting in concert and attempting to divide a request into a series of requests for the purpose of evading the assessment of fees, ABMC shall aggregate any such requests and charge accordingly. One element to be considered is the time period in which the requests have been made. Before aggregating requests from more than one requester, ABMC must be reasonably certain that the requesters are acting specifically to avoid payment of fees. In no case shall ABMC aggregate multiple requests on unrelated subjects from one requester.

(4) *Advance payments.* ABMC shall not require payment for fees before work has commenced or continued on a request unless:

(i) ABMC estimates that the charges may exceed $25.00. In such an event, ABMC shall notify the requester of the estimated cost and may require an advance payment of an amount up to the full amount of estimated charges; or

(ii) A requester has previously failed to pay a fee within 30 days of the date of billing. In this event, ABMC shall require the requester to pay the full amount owed plus any applicable interest and make an advance payment of the full amount of the estimated fee before ABMC begins to process a new request or a pending request from that requester.

(iii) When ABMC acts under paragraphs (a)(4)(i) or (ii) of this section, the administrative time limits prescribed in § 404.3 will begin only after ABMC has received fee payments described above.

(5) *Form of payment.* Remittances shall be in the form of a personal check or bank draft drawn on any bank in the United States, a postal money order, or cash. Remittances shall be made payable to the American Battle Monuments Commission.

(6) ABMC will not defray cost sending records by special methods such as express mail or for transportation of personnel.

(b) *Restrictions on assessing fees.* With the exception of requesters seeking documents for commercial use, section (a)(4)(A)(iv) of the Freedom of Information Act, as amended, requires ABMC to provide the first 100 pages of duplication and the first two hours of search time without charge. ABMC shall not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself. ABMC will not begin to assess fees until it has first provided the free search and reproduction authorized.

§ 404.8 Categories of requesters.

There are four categories of FOIA requesters: Commercial; educational and noncommerical scientific institutions; representatives of the news media; and all others. The fees to be charges each of these categories of requesters are as follows:

(a) *Commerical.* When ABMC receives a request for documents for commerical use, it shall assess charges that recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial requesters are not entitled to two hours of free search time or 100 free pages of reproduction. ABMC shall recover the cost of searching for the records even if ultimately there is no disclosure of records. Requesters must provide a reasonable description of the records sought.

(b) *Educational and non-commerical scientific institutions.* ABMC shall provide documents to educational and non-commercial scientific institutions for the cost of reproduction alone, except there will be no charge for the first 100 pages of duplication. To be eligible for inclusion in this category, requesters must show that the request is authorized by and under the auspices of a qualifying institution and that the records are not being sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a noncommercial scientific institution) research. Requesters must provide a reasonable description of the records being sought;

(c) *Representatives of the news media.* ABMC shall provide documents to requesters who are representatives of the news media for the cost of reproduction alone, except there will be no charge for the first 100 pages. A request for records supporting the news-dissemination function of the requester shall not be considered commerical use. Requesters must provide a reasonable description of the records sought;

(d) *All other requesters.* ABMC shall charge requesters who do not fit into any of the above categories fees that recover the full reasonable costs of direct search and reproduction records responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Requesters must provide reasonable description of the records sought.

§ 404.9 Waiver of fees.

The Freedom of Information Representative shall waive all fees assessed under 404, if the following two conditions are satisfied: Disclosure of the information is in the public interest as it is likely to contribute significantly to public understanding of the operations or activities of the government; and disclosure is not primarily in the commercial interest of the requester. The Freedom of Information Representative shall afford the requester the opportunity to show that he satisfies these two conditions. Under the above standards should ABMC refuse to waive a request for information and the requester petition for a waiver, the senior Freedom of Information Representative will make the determination.

§ 404.10 Maintenance of statistics.

(a) The Freedom of Information Representative shall maintain record of:

(1) The total amount of fees collected by ABMC under this part;

(2) The number of denials of requests for records or information made under this part and the reason for each;

(3) The number of appeals from such denials, together with the results of such appeals, and the reasons for the action upon each appeal that results in a denial of information or documents;

(4) The name and title or position of each person responsible for each denial of records and the number of instances of each;

(5) The results of each proceeding conducted under 5 U.S.C. 552(a)(4)(F), including a report of the disciplinary action against the official or employee primarily responsible for improperly withholding records, or an explanation of why disciplinary action was not taken;

(6) A copy of every rule made by this agency affecting or implementing 5 U.S.C. 552;

(7) A copy of the fee schedule for copies of records and documents requested under this part; and

(8) All other information that indicates efforts to administer fully the letter and spirit of the Freedom of Information Act and the above rules.

(b) The Freedom of Information Act Representative shall annually, within 60 days following the close of each calendar year, prepare a report covering each of the categories of records to be maintained in accordance with the foregoing and submit the same to the Speaker of the House of Representatives and the President of the Senate for referral to the appropriate committees of the Congress.

PART 405—SCHEDULE OF FEES FOR SEARCH AND DUPLICATION OF RECORDS

Sec.
405.1 General.
405.2 Schedule.

Authority: 5 U.S.C. 552, as amended.

§ 405.1 General.

(a) While most information will be furnished promptly at no cost as a service to the general public, fees will be charged if the cost of search and duplication warrants.

(b) When a fee is to be charged, the individual requesting the information will be informed of the fee, and no work will be performed until he or she has agreed to pay it.

[40 FR 7304, Feb. 19, 1975]

§ 405.2 Schedule.

Fees which may be charged by this Commission for search and duplication of records are as follows:

(a) *Duplication fees*: (1) $2.00 for first 6 pages, 5¢ per page thereafter for photocopying.

(2) $1.50 per 8×10 inch black and white print of photographs.

(3) $2.50 per 8×10 inch color print of photographs.

(b) *Search fees*: (1) $8.00 per hour to search records for specific documents.

(2) $215.00 for selective extracts from Commission computer tapes.

(3) Transportation costs of personnel and records arising from searches for requested information.

[40 FR 7304, Feb. 19, 1975]

PART 406—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY AMERICAN BATTLE MONUMENTS COMMISSION

Sec.
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406.103 Definitions.
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406.112—406.129 [Reserved]
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406.131—406.139 [Reserved]
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406.149 Program accessibility: Discrimination prohibited.
406.150 Program accessibility: Existing facilities.
406.151 Program accessibility: New construction and alterations.
406.152—406.159 [Reserved]
406.160 Communications.
406.161—406.169 [Reserved]
406.170 Compliance procedures.
406.171—406.999 [Reserved]

AUTHORITY: 29 U.S.C. 794.

SOURCE: 51 FR 4577, Feb. 5, 1986, unless otherwise noted.

§ 406.101 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 406.102 Application.

This part applies to all programs or activities conducted by the agency.

§ 406.103 Definitions.

For purposes of this part, the term—

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Handicapped person means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one of more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term *physical or mental impairment* includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addition and alcholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in subparagraph (1) of this definition but is treated by the agency as having such an impairment.

Qualified handicapped person means—

(1) With respect to any agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature; or

(2) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

(3) *Qualified handicapped person* is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 406.140.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

[51 FR 4577, Feb. 5, 1986; 51 FR 7543, Mar. 5, 1986]

§§ 406.104—406.109 [Reserved]

§ 406.110 Self-evaluation.

(a) The agency shall, by April 9, 1987, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, until three years following the completion of the self-evaluation, maintain on file and make available for public inspections:

(1) A description of areas examined and any problems identified, and

(2) A description of any modifications made.

§ 406.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 406.112—406.129 [Reserved]

§ 406.130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualfied handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§§ 406.131—406.139 [Reserved]

§ 406.140 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§§ 406.141—406.148 [Reserved]

§ 406.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 406.150, no qualified handicapped person shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 406.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons; or

(2) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 406.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is nor required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by June 6, 1986, except that where structural changes in facilities are undertaken, such changes shall be made by April 7, 1989, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by October 7, 1986, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

[51 FR 4577, Feb. 5, 1986; 51 FR 7543, Mar. 5, 1986]

§ 406.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151-4157), as established in 41 CFR 101-19.600 to 101-19.607, apply to buildings covered by this section.

§§ 406.152—406.159 [Reserved]

§ 406.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 406.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§§ 406.161—406.169 [Reserved]

§ 406.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Director, Personnel and Administration shall be responsible for coordinating implementation of this section. Complaints may be sent to the Director, Personnel and Administration, American Battle Monuments Commission, Room 5127, Pulaski Building, 20 Massachusetts Ave., N.W., Washington, D.C. 20314.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found;

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § 406.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[51 FR 4577, Feb. 5, 1986, as amended at 51 FR 4577, Feb. 5, 1986]

§§ 406.171—406.999 [Reserved]

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PART 504—RULES AND REGULATIONS GOVERNING SMITHSONIAN INSTITUTION BUILDINGS AND GROUNDS

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AUTHORITY: Secs. 1-9, 65 Stat. 634, as amended, secs. 1-4, 78 Stat. 365; 40 U.S.C. 193n-193w.

SOURCE: 33 FR 6656, May 1, 1968, unless otherwise noted.

§ 504.1 General.

These rules and regulations apply to all buildings and grounds of the Smithsonian Institution, as defined in section 3, 78 Stat. 366; 40 U.S.C. 193v(1) (A) and (C), and to all persons entering in or on such buildings and grounds, hereinafter referred to as the premises.

§ 504.2 Recording presence.

Except as otherwise ordered, Smithsonian buildings shall be closed to the public after normal visiting hours. Such buildings, or portions thereof, shall also be closed to the public in emergency situations and at such other times as may be necessary for the orderly conduct of business. Whenever the buildings are closed to the public for any reason, visitors will immediately leave the premises upon being requested by a guard or other authorized individuals. Admission to such premises during periods when closed to the public will be limited to authorized individuals who will be required to register and identify themselves when requested by guards or other authorized individuals.

§ 504.3 Preservation of property.

It is unlawful willfully to destroy, damage, or remove property or any part thereof. Any parcels, portfolios, bags, or containers of any kind may be required to be opened and the contents identified prior to removal from the premises. In order to remove any property from the premises, a properly completed property pass signed by an authorized official of the Smithsonian Institution may be required prior to removal.

§ 504.4 Conformity with signs and emergency directions.

Persons in or on the premises shall comply with official signs of a prohibitory or directory nature and with the directions of authorized individuals.

§ 504.5 Nuisances.

The use of loud, abusive, or otherwise improper language; unwarranted loitering, sleeping or assembly; the creation of any hazard to persons or things; improper disposal of rubbish; spitting, prurient prying; the commission of any obscene or indecent act, or any other unseemly or disorderly conduct on the premises; throwing articles of any kind from or within a building; or climbing upon any part of a building is prohibited.

§ 504.6 Gambling.

Participating in games for money or other persons' property or the operation of gambling devices, the conduct of a lottery or pool, or the selling or purchasing of numbers tickets in or on the premises is prohibited.

§ 504.7 Intoxicating beverages and narcotics.

Entering the premises or the operating of a motor vehicle thereon by a person under the influence of any intoxicating beverage or narcotic drug or the use of such drug in or on the premises is prohibited. Consumption of intoxicating beverages on the premises is prohibited unless officially authorized.

§ 504.8 Soliciting, vending, debt collection, and distribution of handbills

The soliciting of alms and contributions, commercial soliciting and vending of all kinds, the display or distribution of commercial advertising, or the collecting of private debts, in or on the premises is prohibited. This rule does not apply to national or local drives for funds for welfare, health, and other purposes sponsored or approved by the Smithsonian Institution concessions, or personal notices posted by employees on authorized bulletin boards. Distribution of material such as pamphlets, handbills, and flyers is prohibited without prior approval of authorized individuals.

§ 504.9 Placards, signs, banners and flags.

The displaying or carrying of placards, signs, banners, or flags is prohibited unless officially authorized.

§ 504.10 Dogs and other animals.

Dogs and other animals, except seeing-eye dogs, shall not be brought upon the premises for other than official purposes

§ 504.11 Photographs for news, advertising, or commercial purposes.

No photographs for advertising or any other commercial purpose may be taken on the premises unless officially authorized.

§ 504.12 Items to be checked.

Umbrellas, canes (not needed to assist in walking), or other objects capable of inflicting damage to property or exhibits may be required to be checked in buildings where checking facilities are provided.

§ 504.13 Vehicular and pedestrian traffic.

(a) Drivers of all vehicles in or on the premises shall drive in a careful and safe manner at all times and shall comply with the signals and directions of the guards and all posted traffic signs.

(b) The blocking of entrances, driveways, walks, loading platforms, or fire hydrants in or on property is prohibited. Parking without authority, or parking in unauthorized locations or in locations reserved for other persons or contrary to the direction of posted signs, is prohibited. This paragraph may be supplemented from time to time by the issuance and posting of such additional traffic and parking directives as may be required, and such directives shall have the same force and effect as if made a part thereof.

§ 504.14 Weapons and explosives.

No person while on the premises shall carry firearms, other dangerous or deadly weapons, or explosives, either openly or concealed, except for official purposes.

§ 504.15 Nondiscrimination.

There shall be no discrimination by segregation or otherwise against any person or persons because of race, religion, color, or national origin in furnishing or by refusing to furnish to such person or persons the use of any facility of a public nature, including all services, privileges, accommodations, and activities provided thereby on the premises.

§ 504.16 Penalties.

Section 6 of the Smithsonian Institution Special Policing Statute, Act of October 24, 1951, 65 Stat. 635, 40 U.S.C. 193(s) states that:

> Whoever violates any provision of sections 193o–193q of this Title, or any regulation prescribed under section 193r of this Title, shall be fined not more than $100 or imprisoned not more than sixty days, or both, prosecution for such offenses to be had in the District of Columbia Court of General Sessions, upon information by the U.S. attorney or any of his assistants: *Provided*, That in any case where, in the commission of such offense, property is damaged in an amount exceeding $100, the amount of the fine for the offense may be not more than $5,000, the period of imprisonment for the offense may be not more than 5 years and prosecution shall be had in the U.S. District Court for the District of Columbia by indictment, or if the defendant, after he has been advised of the nature of the charge and of his rights, waives in open court prosecution by indictment, by information by the U.S. attorney or any of his assistants.

PART 520—RULES AND REGULATIONS GOVERNING THE BUILDINGS AND GROUNDS OF THE NATIONAL ZOOLOGICAL PARK OF THE SMITHSONIAN INSTITUTION

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520.13 Items to be checked.
520.14 Vehicular and pedestrian traffic.
520.15 Weapons and explosives.
520.16 Nondiscrimination.
520.17 Lost and found.
520.18 Penalties.

AUTHORITY: Secs. 1-9, 65 Stat. 634, as amended, secs. 1-4, 78 Stat. 365; 40 U.S.C. 193n-193w.

SOURCE: 33 FR 17175, Nov. 20, 1968, unless otherwise noted.

§ 520.1 General.

The rules and regulations in this part apply to all buildings and grounds of the National Zoological Park of the Smithsonian Institution, as defined in sec. 3, 78 Stat. 366; 40 U.S.C. 193v(1)(B), and to all persons entering in or on such buildings and grounds, hereinafter referred to as the premises.

§ 520.2 Recording presence.

Except as otherwise ordered, National Zoological Park buildings and grounds shall be closed to the public after posted visiting hours. Such buildings and grounds, or portions thereof, shall be also closed to the public in emergency situations and at such other times as may be necessary for the orderly conduct of business. Whenever the buildings and grounds or portions thereof are closed to the public for any reason, visitors will immediately leave the premises upon being requested by a police officer or other authorized individual. Admission to such premises during periods when closed to the public will be limited to authorized individuals who will be required to register and identify themselves when requested by police officers or other authorized individuals.

§ 520.3 Preservation of property.

It is unlawful willfully to destroy, damage, or remove property or any part thereof. Any parcels, portfolios, bags, or containers of any kind may be required to be opened and the contents identified prior to removal from the premises. In order to remove any property from the premises, a properly completed property pass signed by an authorized official of the National Zoological Park may be required prior to removal.

§ 520.4 Protection of zoo animals.

Except for official purposes, no person shall:

(a) Kill, injure, or disturb any exhibit or research animal by any means except to secure personal safety;

(b) Pet, attempt to pet, handle, move, or remove exhibit or research animals;

(c) Feed exhibit or research animals, except in strict accordance with authorized signs;

(d) Catch, attempt to catch, trap, remove, or kill any free roaming animals inhabiting the premises;

(e) Go over, under, between, or otherwise cross any guardrail, fence, moat, wall, or any other safety barrier; or to seat, stand, or hold children over any of the above-mentioned barriers;

(f) Throw or toss rocks, or any other missiles into, from, or while on premises;

(g) Bring strollers, baby carriages, or other conveyances, except wheel chairs, into exhibit buildings and public restrooms;

(h) Engage in ball games, or any athletic activity, except in places as may be officially designated for such purposes;

(i) Smoke or carry lighted cigarettes, cigars, or pipes into exhibit buildings, or to have a fire of any kind on the premises; or

(j) Damage, deface, pick, or remove any herb, shrub, bush, tree, or turf, or portion thereof, on the premises.

§ 520.5 Conformity with signs and emergency directions.

Persons in or on the premises shall comply with official signs of a prohibitory or directory nature and with the directions of authorized individuals.

§ 520.6 Nuisances.

The use of loud, abusive, or otherwise improper language; unwarranted loitering, sleeping or assembly; the creation of any hazard to persons or things; improper disposal of rubbish; spitting; prurient prying; the commission of any obscene or indecent act, or any other unseemly or disorderly conduct on the premises; throwing articles of any kind on the premises, or climbing upon any part of the building is prohibited.

§ 520.7 Gambling.

Participating in games for money or other personal property or the operation of gambling devices, the conduct of a lottery or pool, or the selling or purchasing of numbers tickets in or on the premises is prohibited.

§ 520.8 Intoxicating beverages and narcotics.

Entering the premises or the operating of a motor vehicle thereon by a person under the influence of any intoxicating beverage or narcotic drug or the use of such drug in or on the premises is prohibited. Consumption of intoxicating beverages on the premises is prohibited, unless officially authorized.

§ 520.9 Soliciting, vending, debt collection, and distribution of handbills.

The soliciting of alms and contributions, commercial soliciting and vending of all kinds, the display or distribution of commercial advertising or the collecting of private debts, in or on the premises is prohibited. This rule does not apply to national or local drives for funds for welfare, health, and other purposes sponsored or approved by the National Zoological Park, concessions, or personal notices posted by employees on authorized bulletin boards. Distribution of material such as pamphlets, handbills, and flyers is prohibited without prior approval of authorized individuals.

§ 520.10 Placards, signs, banners, and flags.

The displaying or carrying of placards, signs, banners, or flags is prohibited unless officially authorized.

§ 520.11 Dogs and other animals.

Dogs and other animals, except seeing-eye dogs, shall not be brought upon the premises for other than official purposes unless confined to automobiles.

§ 520.12 Photographs for news, advertising, or commercial purposes.

No photographs for advertising or any other commercial purpose may be taken on the premises unless officially authorized.

§ 520.13 Items to be checked.

Umbrellas, canes (not needed to assist in walking), or other objects capable of inflicting damage to property or exhibits may be required to be checked at the police station where checking facilities are provided.

§ 520.14 Vehicular and pedestrian traffic.

(a) Drivers of all vehicles in or on the premises shall drive in a careful and safe manner at all times and shall comply with the signals and directions of the police and all posted traffic signs.

(b) The blocking of entrances, driveways, walks, loading platforms, or fire hydrants in or on property is prohibited. Parking without authority, or parking in unauthorized locations or in locations reserved for other persons or contrary to the direction of posted signs, is prohibited. This paragraph may be supplemented from time to time by the issuance and posting of such additional traffic and parking directives as may be required, and such directives shall have the same force and effect as if made a part thereof.

§ 520.15 Weapons and explosives.

No person while on the premises shall carry firearms, other dangerous or deadly weapons, or explosives, either openly or concealed, except for official purposes, nor shall any person discharge or set off any firework or explosive of any nature on the premises.

§ 520.16 Nondiscrimination.

There shall be no discrimination by segregation or otherwise against any person or persons because of race, religion, color, or national origin in furnishing or by refusing to furnish to such person or persons the use of any facility of a public nature, including all services, privileges, accommodations, and activities provided thereby on the premises.

§ 520.17 Lost and found.

(a) Lost articles or money which are found in areas covered by this part shall be immediately referred to the police station. Proper records shall be kept at Police Headquarters of the receipt and disposition of such articles. If an article or money found on park areas and referred to Zoo Police Headquarters is not claimed by the owner within a period of 60 days, it shall be returned to the finder and appropriate receipt obtained; except that in the case of National Zoological Park employees, articles or money turned in which are not claimed by the owner within 60 days shall be considered as abandoned to the Smithsonian Institution. Such articles or money shall be transferred to the Treasurer of the Smithsonian Institution, who shall make suitable disposition of articles and remit all proceeds of such disposition and all unclaimed money into the unrestricted funds of the Smithsonian Institution.

(b) The abandonment of any personal property in any of the park areas is prohibited.

§ 520.18 Penalties.

Section 6 of the Smithsonian Institution Special Policing Statute, Act of October 24, 1951, 65 Stat. 635, 40 U.S.C. 193 (s) states that:

> Whoever violates any provision of sections 193o-193q of this Title, or any regulation prescribed under section 193r of this Title, shall be fined not more than $100 or imprisoned not more than 60 days, or both, prosecution for such offenses to be had in the District of Columbia Court of General Sessions, upon information by the United States attorney or any of his assistants: *Provided*, That in any case where, in the commission of such offense, property is damaged in an amount exceeding $100, the amount of the fine for the offense may be not more than $5,000, the period of imprisonment for the offense may be not more than 5 years and prosecution shall be had in the U.S. District Court for the District of Columbia by indictment, or if the defendant, after he has been advised of the nature of the charge and of his rights, waives in open court prosecution by indictment, by information by the U.S. attorney or any of his assistants.

PART 530—CLAIMS AGAINST THE SMITHSONIAN INSTITUTION INCLUDING THE NATIONAL GALLERY OF ART, THE JOHN F. KENNEDY CENTER FOR THE PERFORMING ARTS AND THE WOODROW WILSON INTERNATIONAL CENTER FOR SCHOLARS

AUTHORITY: 20 U.S.C. 41, *et seq.*

§ 530.1 Tort claims.

The Smithsonian Institution (which encompasses the National Gallery of Art, the John F. Kennedy Center for the Performing Arts and the Woodrow Wilson International Center for Scholars) falls within the purview of the Federal Tort Claims Act. Internal procedures for implementing the Act follow the current general guidance issued by the U.S. Department of Justice in 28 CFR Part 14. Information on specific claims procedures can be obtained as follows:

(a) Smithsonian Institution: Office of the General Counsel, Smithsonian Institution, Washington, DC 20560.

(b) National Gallery of Art: Administrator, National Gallery of Art, Washington, DC 20565.

(c) John F. Kennedy Center for the Performing Arts: Director of Operations, John F. Kennedy Center for the Performing Arts, Washington, DC 20566.

(d) Woodrow Wilson International Center for Scholars: Assistant Director for Administration, Woodrow Wilson International Center for Scholars, Smithsonian Institution, Washington, DC 20560.

[49 FR 9421, Mar. 13, 1984]

CHAPTER VI—[RESERVED]

CHAPTER VII—LIBRARY OF CONGRESS

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Editorial Note: The regulations in this Chapter VII were formerly codified in 44 CFR Chapter V.

PART 701—PROCEDURES AND SERVICES

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AUTHORITY: Sec. 1, 29 Stat. 544, 546 (2 U.S.C. 136).

§ 701.1 Application for employment.

The Library of Congress is an Excepted Service Legislative Branch agency. As such, it has its own independent merit system, and applicants do not need Civil Service status to apply for its positions. The Library has a wide range of clerical, technical, and professional positions (the latter being primarily oriented to library operations such as processing, cataloging, and reference, but with some positions in non-librarian occupations such as computer, subject area and research analyst specialists). The Library's Employment Office is located in Room LM-107, James Madison Building, First Street and Independence Avenue, S.E., Washington, D.C. 20540. Information about current employment needs and the procedure for application may be obtained by either visiting this office (Monday-Friday, 8:30 a.m. to 4:30 p.m.), calling during these hours at (202) 287-JOBS, or writing to the above address. A 24-hour recording of general information is available at (202) 287-5295.

[46 FR 48660, Oct. 2, 1981]

§ 701.2 Access to Library buildings.

(a) In accordance with the Library's general policy, persons other than staff members may be admitted to the Library buildings and to the various areas therein that are open to the public during the announced hours of public opening. Such persons may be admitted to other areas within the buildings and at other times only in accordance with established access regulations.

(b) Persons having legitimate business in buildings closed to the public may be admitted after identification by responsible officials in the building or by authority as evidenced by a building access pass issued by the Associate Librarian for Management.

[35 FR 10588, June 30, 1970. Redesignated at 38 FR 27049, Sept. 28, 1973, and amended at 46 FR 48660, Oct. 2, 1981]

§ 701.3 Removal of materials from the Library buildings.

No material may be removed from the Library buildings without the proper stamp, pass, or other authorization as prescribed by regulations established by The Librarian of Congress. All property including, but not limited to, suitcases, briefcases, handbags, large envelopes, packages, and office equipment may be inspected upon leaving Library buildings in order to prevent the improper removal of property belonging to the U.S. Government.

[51 FR 22073, June 18, 1986]

§ 701.4 Information about the Library.

Information about the activities, program, services, organization, and history of the Library of Congress is provided by the Information Office, which has primary responsibility for responding, or for arranging for other divisions of the Library to respond, to inquiries on these subjects from the public and from representatives of public-information media. Such information is provided through publications and through individual response by telephone, by mail, and in personal conference. For convenience of the public, the office administers information counters in the James Madison and Thomas Jefferson Buildings; its staff answers visitors' inquiries about the Library but does not provide reference service for readers wishing to use the Library's collections. Free publications about the Library and some price publications and facsimiles of famous documents are available at this counter.

[35 FR 10588, June 30, 1970. Redesignated at 38 FR 27049, Sept. 28, 1973, and amended at 51 FR 22073, June 18, 1986]

§ 701.5 The Library's reading rooms and public use thereof.

Materials in the general classified collections of the Library are serviced in the Main and Local History and Genealogy reading rooms (Thomas Jefferson Building), and the Science and Social Science reading rooms (John Adams Building). Special collections, as explained further in subsequent sections, are serviced in the following reading rooms; Archive of Folk Culture, European, Microform, and Rare Book and Special Collections (Thomas Jefferson Building), African and Middle East and Asian (Adams Building), and Geography and Map, Law Library, Manuscript, Motion Picture and Television, Newspaper and Current Periodical, Performing Arts, Prints and Photographs, and Recorded Sound Reference Center (James Madison Memorial Building). Reference and bibliographic assistance is provided by the staff on duty in the reading rooms, to the extent necessary to supplement the reader's prior use of library resources elsewhere and/or to facilitate use of the Library's collections.

[51 FR 22073, June 18, 1986]

§ 701.6 Service of the general collections.

Requests for materials in the general classified collections are submitted by readers on forms provided for that purpose. Available materials so requested are located and delivered to readers by the staff. Subject to specified limitations, materials may be reserved for continued use. Access to the bookstacks is permitted only under regulations established by the Librarian of Congress. Applications for access are acted upon by the Chief of the General Reading Rooms Division or by other authorized officials.

[35 FR 10588, June 30, 1970. Redesignated at 38 FR 27049, Sept. 28, 1973, and amended at 51 FR 22073, June 18, 1986]

§ 701.7 Reference and bibliographic assistance.

(a) Reference and bibliographic services provided in response to requests from readers and requests received by telephone and by mail are governed by policies and regulations established by the Librarian of Congress.

(b) Readers requiring reference and bibliographic assistance in the general collections and aid in the use of the catalogs may request help from the staff on duty in the general reading rooms. Requests for such assistance in special collections are referred to the appropriate specialized division and reading rooms.

(c) Reference inquiries and requests for service which cannot be satisfied by other libraries or scholarly institutions nearer the inquirer may be submitted to the Library of Congress, which will respond to them insofar and on such conditions as available staff and facilities permit.

[35 FR 10588, June 30, 1970. Redesignated at 38 FR 27049, Sept. 28, 1973, and amended at 46 FR 48661, Oct. 2, 1981]

§ 701.8 Special study facilities.

Special study facilities and reserved shelves are available for assignment to persons engaged in research. Applications for such assignments are acted upon by the Chief of the General Reading Rooms Division or by other authorized officials, and assignments on approved applications are made on specified conditions of registration, tenure, and use.

[35 FR 10588, June 30, 1970. Redesignated at 38 FR 27049, Sept. 28, 1973, and amended at 46 FR 48661, Oct. 2, 1981]

§ 701.9 Loans of library materials.

The Library of Congress is not a public circulating library and no material in its collections may be taken from the Library buildings except upon approval by the Chief of the Loan Division. Members of Congress, heads of executive departments, and other statutory borrowers, however, have the privilege of withdrawing books by virtue of their office. Subject to regulations and conditions established by The Librarian of Congress, special permission to withdraw materials may be given to congressional staff. Applications for such privilege are acted upon by the Chief of the Loan Division, who is responsible for the interpretation and enforcement of the regulations governing loans. Except for Members of Congress, heads of executive departments, and others authorized by the Librarian to have materials assembled and delivered to them, persons having the borrowing privilege must present materials to be borrowed to the Loan Division for recording and for issuance of a door pass. Borrowers must present the materials for inspection to the guards on duty at the exits to the Library buildings. Materials are issued on interlibrary loan to other libraries within and outside the District of Columbia under regulations established by the Librarian of Congress. Applications from established libraries for such loans, and requests for information about interlibrary loans and loan service, generally, should be directed to the Chief of the Loan Division.

[35 FR 10588, June 30, 1970. Redesignated at 38 FR 27049, Sept. 28, 1973, and amended at 46 FR 48661, Oct. 2, 1981; 51 FR 22073, June 18, 1986]

§ 701.10 Loans of library materials for blind and other physically handicapped persons.

(a) *Program.* In connection with the Library's program of service under the Act of March 3, 1931 (46 Stat. 1487), as amended, its National Library Service for the Blind and Physically Handicapped provides books in raised characters (braille), on sound reproduction recordings, or in any other form, under regulations established by the Librarian of Congress. The National Library Service also provides and maintains reproducers for such sound reproduction recordings for the use of blind and other physically handicapped residents of the United States, including the several States, Territories, Insular Possessions, and the District of Columbia, and American citizens temporarily domiciled abroad.

(b) *Eligibility criteria.* (1) The following persons are eligible for such service:

(i) Blind persons whose visual acuity, as determined by competent authority, is 20/200 or less in the better eye with correcting glasses, or whose widest diameter if visual field subtends an angular distance no greater than 20 degrees.

(ii) Persons whose visual disability, with correction and regardless of optical measurement, is certified by competent authority as preventing the reading of standard printed material.

(iii) Persons certified by competent authority as unable to read or unable to use standard printed material as a result of physical limitations.

(iv) Persons certified by competent authority as having a reading disability resulting from organic dysfunction and of sufficient severity to prevent their reading printed material in a normal manner.

(2) In connection with eligibility for loan services "competent authority" is defined as follows:

(i) In cases of blindness, visual disability, or physical limitations "competent authority" is defined to include doctors of medicine, doctors of osteopathy, ophthalmologists, optometrists, registered nurses, therapists, professional staff of hospitals, institutions, and public or welfare agencies (e.g., social workers, case workers, counselors, rehabilitation teachers, and superintendents). In the absence of any of these, certification may be made by professional librarians or by any persons whose competence under specific circumstances is acceptable to the Library of Congress.

(ii) In the case of reading disability from organic dysfunction, competent authority is defined as doctors of medicine who may consult with colleagues in associated disciplines.

(c) *Loans through regional libraries.* Sound reproducers are lent to individuals and appropriate centers through agencies, libraries, and other organizations designated by the Librarian of Congress to service specific geographic areas, to certify eligibility of prospective readers, and to arrange for maintenance and repair of reproducers. Libraries designated by the Librarian of Congress serve as local or regional centers for the direct loan of such books, reproducers, or other specialized material to eligible readers in specific geographic areas. They share in the certification of prospective readers, and utilize all available channels of communication to acquaint the public within their jurisdiction with all aspects of the program.

(d) *National collections.* The Librarian of Congress, through the National Library Service for the Blind and Physically Handicapped, defines regions and determines the need for new regional libraries in cooperation with other libraries or agencies whose activities are primarily concerned with the blind and physically handicapped. It serves as the center from which books, recordings, sound reproducers, and other specialized materials are lent to eligible blind and physically handicapped readers who may be temporarily domiciled outside the jurisdictions enumerated by the Act. It maintains a special collection of books in raised characters and on sound reproduction recordings not housed in regional libraries and makes these materials available to eligible borrowers on interlibrary loan.

(e) *Institutions.* The reading materials and sound reproducers for the use of blind and physically handicapped persons may be loaned to individuals who qualify, to institutions such as nursing homes and hospitals, and to schools for the blind or physically handicapped for the use of such persons only. The reading materials and sound reproducers may also be used in public or private schools where handicapped students are enrolled; however, the students in public or private schools must be certified as eligible on an individual basis and must be the direct and only recipients of the materials and equipment.

(f) *Musical scores.* The National Library Service also maintains a library of musical scores, instructional texts, and other specialized materials for the use of the blind and other physically handicapped residents of the United States and its possessions in furthering their educational, vocational, and cultural opportunities in the field of music. Such scores, texts, and materials are made available on a loan basis under regulations developed by the Librarian of Congress in consultation with persons, organizations, and agencies engaged in work for the blind and for other physically handicapped persons.

(g) *Veterans.* In the lending of such books, recordings, reproducers, musical scores, instructional texts, and other specialized materials, preference shall be at all times given to the needs of the blind and other physically handicapped persons who have been honorably discharged from the Armed Forces of the United States.

(h) Inquiries for information relative to the prescribed procedures and regulations governing such loans and requests for loans should be addressed to: Director, National Library Service for the Blind and Physically Handicapped, Library of Congress, Washington, D.C. 20542.

[39 FR 20203, June 7, 1974, as amended at 46 FR 48661, Oct. 2, 1981]

§ 701.11 Lending of materials from the Library for exhibition.

Subject to special conditions and procedures determined by the Library, certain materials in the Library's collections are available for loan to recognized institutions, such as libraries and museums, with established exhibition programs and with staffs proficient in handling the particular material requested. This service is subject to limitations in terms of the character of the materials and the availability of staff to prepare materials for shipment. Each request for loan is judged on its particular merits, i.e., type of institution and program for which loan is proposed in relation to the importance and value, both monetary and intrinsic, of the material requested and the probability of its being replaceable in the event of loss. Communications concerning the lending of materials for exhibition should be addressed to the Exhibits Officer, Library of Congress, Washington, D.C. 20540.

[35 FR 10588, June 30, 1970. Redesignated at 38 FR 27049, Sept. 28, 1973]

§ 701.12 Photoduplication service.

Photocopies of materials in the Library's general and special collections may be obtained from the Library's Photoduplication Service at prevailing rates and subject to prescribed contract provisions, provided that they are not subject to copyright or other restrictions, or provided that permission to copy has been obtained. Order forms for photocopies may be secured from the Photoduplication Service, Library of Congress, Washington, D.C. 20540.

[35 FR 10588, June 30, 1970. Redesignated at 38 FR 27049, Sept. 28, 1973]

§ 701.13 Service of African and Middle Eastern materials.

(a) Services to readers in the African and Middle Eastern Division are provided in accordance with prescribed conditions of use of materials in the custody of the division: materials written or printed in Arabic, Hebrew, Persian, Turkish, Yiddish, etc.

(b) Readers requiring reference and bibliographic assistance in the general areas of African and Middle Eastern studies are assisted in the African and Middle Eastern Division's three component sections: African, Hebraic, and Near East, each of which maintains a reference collection and pertinent bibliographic tools. Reference service on special materials of interest to African and Middle Eastern studies (except law) is provided by the divisions holding such materials, as identified in § 701.5. In the fields of science and technology, reference and bibliographic services are provided by the Science and Technology Division.

[51 FR 22073, June 18, 1986]

§ 701.14 Service of Asian materials.

(a) Services to readers in the Asian Division are provided in accordance with prescribed conditions of use of materials in the custody of the division: materials written or printed in Bengali, Burmese, Chinese, Hindi, Indonesian, Japanese, Korean, Thai, Urdu, Vietnamese, etc.

(b) Readers requiring reference and bibliographic assistance in the general areas of Asian studies are assisted in the Asian Division's three component sections. Reference service on special materials of interest to Asian studies (except law) is provided by the divisions holding such materials, as identified in § 701.5. In the fields of science and technology, reference and bibliographic services are provided by the Science and Technology Division.

[51 FR 22073, June 18, 1986]

§ 701.15 Service of European materials.

(a) Services to readers in the European Division are provided in accordance with prescribed conditions of use of the materials in the custody of the European Division: Unbound serials and newspapers, (with the exception of those assigned to the Law Library), written or printed in any of the Slavic languages and in Estonian, Latvian, and Lithuanian. Readers requesting reference and bibliographic assistance on European materials classified in the general collections are assisted by staff on duty in the general reading rooms, or in the European Reading Room, which maintains a reference collection and pertinent informational files.

(b) The professional staff of the European Division renders reference and bibliographic services pertaining to the cultural, political, social, and economic life of Albania, Austria, Belgium, Bulgaria, Cyprus, Czechoslovakia, Denmark, Estonia, Finland, France, the German Democratic Republic, the Federal Republic of Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Monaco, The Netherlands, Norway, Poland, Romania, San Marino, the Soviet Union, Sweden, Switzerland, the Vatican City, and Yugoslavia. Reference service on special materials of interest to European studies (except law) is provided by the divisions holding such materials, as identified in § 701.5. In the fields of science and technology, reference and bibliographic services are provided by the Science and Technology Division.

[51 FR 22073, June 18, 1986]

§ 701.16 Service of folklife materials.

(a) The American Folklife Center renders specialized reference, bibliographic and consulting services pertaining to "preserving and presenting" folk cultural traditions in the United States. The Center is not a grant-giving agency but concentrates on varied services to the field—coordination of folk cultural activities, local, state, Federal and at the Library of Congress; field projects, technical and consultant services; research and archival service; and publications, exhibits and live presentations designed to disseminate ideas and materials pertaining to American folk culture.

(b) The Center's Archive of Folk Song provides reference and referral services concerning folklife and ethnomusicology by telephone, through correspondence, and directly to readers in the Archive's Reading Room on the Library's pertinent collection of books, periodicals, recordings, manuscripts, etc. Printed descriptions of the Archive's published reference and findings aids, recordings, intern program, and other services, are available from the Archive of Folk Culture, Library of Congress, Washington, D.C. 20540.

[46 FR 48663, Oct. 2, 1981, as amended at 51 FR 22073, June 18, 1986]

§ 701.17 Service of Hispanic materials.

(a) Readers requesting reference and bibliographic assistance on hispanic materials classified in the general collections may consult staff on duty in the general reading rooms, or in the Hispanic Reading Room, which maintains a reference collection and pertinent informational files.

(b) The professional staff of the Hispanic Division renders reference and bibliographic services pertaining to the cultural, political, social and economic life of Spain, Portugal, and the countries of Latin America and the Caribbean, as well as for materials pertaining to the social and cultural life of Hispanics in the United States. Reference service on special materials of interest to Hispanic studies (except law) is provided by the divisions holding such materials, as identified in § 701.5. In the fields of science and technology, reference and bibliographic services are provided by the Science and Technology Division.

[51 FR 22074, June 18, 1986]

§ 701.18 Service of legal materials.

(a) Legal materials are served in the reading room of the Law Library in the James Madison Building. Those volumes which are not on the open shelves may be obtained for reading room use by filling out and presenting to a reference assistant a slip provided for the purpose.

(b) The collections of the Law Library are available in part, for use outside the Library for a limited period, to authorized borrowers in Washington, D.C., and through interlibrary loan to the general public residing in other parts of the country, in conformity with Loan Division procedures. Books which are lent for use outside of the Law Library must be charged in the Law Library. Books which are lent for use outside the Library building must be charged in the Loan Division, where a formal charge is made and a door pass is issued.

[46 FR 48662, Oct. 2, 1981]

§ 701.19 Service of local history and genealogical materials.

Readers requesting reference and bibliographic assistance on materials in local history and genealogy may consult the staff in the Local History and Genealogy Room.

[46 FR 48662, Oct. 2, 1981]

§ 701.20 Service of manuscript materials.

(a) Services to readers in the Manuscript Reading Room are provided in accordance with prescribed conditions of reader registration and use of the materials in the custody of the Manuscript Division. The use of such materials is restricted to the Manuscript Reading Room.

(b) The professional staff of the Manuscript Division renders reference and bibliographic services pertaining to its collections by telephone, through correspondence, and directly to adult readers in the Manuscript Reading Room.

[51 FR 22074, June 18, 1986]

§ 701.21 Service of maps and cartographic materials.

(a) Services to readers in the Geography and Map Reading Room are provided in accordance with prescribed conditions of reader registration and use of the maps, atlases and globes in the custody of the Geography and Map Division. The use of such materials is restricted to the Geography and Map Reading Room.

(b) The professional staff of the Geography and Map Division renders reference and bibliographic services pertaining to its collections by telephone, through correspondence, and directly to adult readers in the Geography and Map Reading Room.

[51 FR 22074, June 18, 1986]

§ 701.22 Service of microfilmed materials.

(a) Service to readers in the Microform Reading Room is provided in accordance with prescribed conditions governing the use of microfilm and microprint material in the custody of the Microform Reading Room. Investigators may requisition inkprint materials from other collections of the Library for use in the Microform Reading Room, but such requests will be subject to limitations consistent with the care and service of the collections, and with regard for service to readers in other reading rooms.

(b) Other units have custody of microfilmed materials, such as manuscripts, newspapers, music, law, and orientalia, and render service on these materials.

[46 FR 48662, Oct. 2, 1981]

§ 701.23 Service of motion picture and television materials.

(a) Services to readers in the Motion Picture and Television Reading Room are provided in accordance with prescribed conditions of reader registration and use of the motion picture film, and videotape materials in the custody of the Motion Picture, Broadcasting and Recorded Sound Division. The use of such materials is restricted to the Motion Picture and Television Reading Room.

(b) The professional staff of the Motion Picture, Broadcasting and Recorded Sound Division renders reference and filmographic services pertaining to its collections by telephone, through correspondence and directly to adult readers in the Motion Picture and Television Reading Room.

[51 FR 22074, June 18, 1986]

§ 701.24 Service of music materials.

(a) Services to readers in the Performing Arts Reading Room are provided in accordance with prescribed conditions of reader registration and use of the music materials in the custody of the Music Division. The use of such materials is restricted to the Performing Arts Reading Room.

(b) The professional staff of the Music Division renders reference and bibliographic services pertaining to its collections, by telephone, through correspondence and directly to adult readers in Performing Arts Reading Room (see also § 701.29).

[51 FR 22074, June 18, 1986]

§ 701.25 Service of prints and photographs.

(a) Services to readers in the Prints and Photographs Reading Room are provided in accordance with prescribed conditions of reader registration and use of the collections of fine and historical prints, drawings, photographs, posters, and architectural drawings and photographs, in the custody of the Prints and Photographs Division. The use of such materials is restricted to the Prints and Photographs Reading Room.

(b) The professional staff of the Prints and Photographs Division renders reference and bibliographic services pertaining to its collections, by telephone, through correspondence and directly to adult readers in the Prints and Photographs Reading Room.

[51 FR 22074, June 18, 1986]

§ 701.26 Service of rare books and special collections.

(a) Services to readers in the Rare Book and Special Collections Reading Room are provided in accordance with prescribed conditions of reader registration and use of the materials in the custody of the Rare Book and Special Collections Division. The use of such materials is restricted to the Rare Book and Special Collections Reading Room.

(b) The professional staff of the Rare Book and Special Collections Division renders reference and bibliographic services pertaining to its collections by telephone, through correspondence, and directly to adult readers in the Rare Book and Special Collections Reading Room.

(c) Service to readers of the rare books in the custody of the Law Library and the Music Division are subject to similar regulations.

[51 FR 22074, June 18, 1986]

§ 701.27 Service of scientific and technical materials.

(a) Readers requesting reference and bibliographic assistance in science and technology may consult the staff on duty in the Science Reading Room. Inquiries are referred when necessary to subject specialists in the Science and Technology Division. A special collection of technical reports is available in the Science Reading Room. Materials on science in the Library's subject-classified collections are also served in the Library's other general reading rooms.

(b) In answering requests for referral service, the Resources Analysis Section of the General Reading Rooms Division compiles names, addresses, telephone numbers, and brief descriptions of appropriate information resources, which may include professional societies, university research bureaus and institutes, Federal and State agencies, industrial laboratories, museums, testing stations, and individual experts as well as more traditional sources of information, such as technical libraries, information and document centers, and abstracting and indexing services.

[51 FR 22074, June 18, 1986]

§ 701.28 Service of serial materials.

(a) Services to readers in the Newspaper and Current Periodical Reading Room are provided in accordance with prescribed conditions of use of the collections of current and unbound periodicals, bound, unbound and microfilmed newspapers, Government documents, ephemera, etc. not assigned to other divisions, in the custody of the Serial and Government Publications Division. The use of such materials is restricted to the Newspaper and Current Periodical Reading Room.

(b) The professional staff of the Serial and Government Publications Division renders reference and bibliographic services pertaining to its collections as well as to the government publications in the general classified collections, by telephone, through correspondence and directly to adult readers in the Newspaper and Current Periodical Reading Room.

[51 FR 22074, June 18, 1986]

§ 701.29 Service of sound recordings.

(a) Services to readers in the Recorded Sound Reference Center in the Performing Arts Reading Room are provided in accordance with prescribed conditions of reader registration and use of the sound recordings of all kinds (except recordings for the blind) in the custody of the Motion Picture, Broadcasting and Recorded Sound Division. The use of such materials, for serious research only, is restricted to the Performing Arts Reading Room and appointments to use them must be sought in advance by application to the Motion Picture, Broadcasting and Recorded Sound Division.

(b) The professional staff of the Recorded Sound Reference Center renders reference and discographic services pertaining to the collections, by telephone, through correspondence, and directly to adult readers in the Performing Arts Reading Room.

(c) Reference and information pertaining to folk music and ethnomusicology are available from the Archive of Folk Culture, American Folklife Center.

(d) A list of recordings of poetry and folk music issued by the Library of Congress and available for a sale may be obtained from the Public Services Coordinator, Motion Picture, Broadcasting and Recorded Sound Division, Library of Congress, Washington, DC 20540.

[51 FR 22075, June 18, 1986]

§ 701.30 Cataloging distribution.

Bibliographic products and services are produced and supplied to the Library of Congress and other libraries by the Cataloging Distribution Service. The Service sells bibliographic data in the form of printed cards, machine-readable tapes (MARC), book catalogs, microfiche catalogs and technical publications to libraries, learned societies, professional institutions, government agencies, private institutions, and cooperative and commercial processing centers. Information may be obtained from the Cataloging Distribution Service, Library of Congress.

[51 FR 22075, June 18, 1986]

§ 701.31 Library of Congress publications.

Publications of the Library include guides to its collections and services, catalogs of materials in the Library of Congress and other libraries, lists and descriptions of serials and monographs received, registers of personal papers of American public figures, bibliographies, facsimiles of rare items in its collections, exhibit catalogs, annual reports, acquisitions reports, and various other issuances relating to the Library and its programs. Most of the Library's publications are sold by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. A complete list of available publications, *Library of Congress Publications in Print*, is distributed free by the Central Services Division, Library of Congress, Washington, D.C. 20540.

[46 FR 48663, Oct. 2, 1981, as amended at 51 FR 22075, June 18, 1986]

§ 701.32 Offers of materials for purchase.

The Library solicits offers of library materials (including books, periodicals, pamphlets, manuscripts, maps, views, music, recordings, motion pictures, photographs, posters, prints, etc.). Lists or catalogs offering materials should specify author, title, place of publication, date of publication, whether or not copyrighted, edition note, series note, and number of pages or volumes. Each item must be priced. All offers of materials and all other correspondence concerning the acquisition by purchase of materials for the Library's collections (including invoices, statements, and questions concerning payment for material purchased by the Library) should be addressed to the Library of Congress, Order Division, Washington, DC 20504. Materials should be sent "on approval" unless specifically requested by the Order Division.

[51 FR 22075, June 18, 1986; 51 FR 23537, June 30, 1986]

§ 701.33 Acquisition of library materials by non-purchase means and disposition of surplus library materials.

(a) *Acquisition of non-purchase materials.* The Exchange and Gift Division has responsibility for the Library's acquisition of materials by non-purchase means, including exchange, gift and transfer, and other government sources.

(1) *Exchanges.* Official exchanges, numbering about one hundred agreements, are maintained between the Library and official agencies or institutions designated in other countries to send and receive official documents. Agreements for official exchanges

stem from multilateral treaties, Executive Agreements, and informal agreements. Sets of U.S. official publications are supplied under these agreements. In addition to official exchanges, general (or non-official) exchanges negotiated on an informal basis are conducted with government agencies at all levels, universities, colleges, museums, libraries, learned organizations and international organizations. (Currently about 15,000 non-official exchanges are in effect throughout the world). The Library sends to these exchange partners selections from its duplicates or current U.S. Government publications. By law (44 U.S.C. 1718 and 1719) the Library is authorized to requisition for use on international exchange up to 125 copies of each U.S. Government publication issued by the Government Printing Office.

(2) *Gift.* The Library solicits gifts from individuals, businesses, foundations, and other organizations throughout the world, including unions, political parties, chambers of commerce, religious groups, etc., that do not enter into exchanges or offer their publications for regular sale. The Library also actively solicits material for its special collections which it would not usually be in a position to purchase, including personal papers, music manuscripts, sound recordings, rare books, fine prints and photographs, etc.

(3) *Government source.* In addition to the documents provided by the Superintendent of Documents for international exchange, the Library is entitled under 44 U.S.C. 1718 to requisition up to 25 copies of each publication issued by the Government Printing Office for use in its own collections. Other laws provide the Library with books for the blind and with publications deposited for copyright. Under a variety of arrangements the Exchange and Gift Division also acquires the official publications of the states, territories, and possessions of the United States for listing in its accessions list, the *Monthly Checklist of State Publications,* and for inclusion in its collections.

(4) *Transfer.* Libraries in other agencies of the Federal Government are encouraged to send to the Library for disposition library materials that are surplus to their needs. Such transferred materials are needed to fill gaps in the Library's holdings, to use for exchanges, to transfer to other Federal agencies, and to make available through the Surplus Books Program to qualified recipients.

(b) *Disposition of surplus books.* The Exchange and Gift Division has available at all times surplus books not needed by the Library for its own uses. These materials are made available for selection on exchange by eligible institutions, organizations, book dealers, and collections, and by donation to educational institutions (tax-supported or non-profit schools, school systems, colleges, universities, museums, and public libraries), non-profit tax-exempt organizations (Section 501 of IRS Code) and public bodies (agencies of local, state, or national governments) in the United States. A public library is defined as "a library that serves free all residents of a community, district, state, or region, and receives its financial support in whole or in part from public funds."

(c) Inquiries concerning the programs relating to the acquisition of materials for the collections of the Library by non-purchase methods and the disposition of surplus materials should be addressed to: Chief, Exchange and Gift Division, Library of Congress, Washington, D.C. 20540.

[46 FR 35088, July 7, 1981. Redesignated at 46 FR 48663, Oct. 2, 1981, and amended at 51 FR 22075, June 18, 1986]

§ 701.34 Contracting officers.

Incumbents of the following positions are authorized to contract for materials and services on behalf of the Library of Congress and to execute contracts in the areas as specified below. The Librarian of Congress may further delegate contracting authority in specific situations.

Library officers	Area of contracting authority
The Librarian of Congress	All areas.
The Deputy Librarian of Congress.	All areas.

Library officers	Area of contracting authority
The Associate Librarian of Congress.	All areas.
Associate Librarian for Management.	All areas except materials for the Library's collections.
Director, Congressional Research Service (CRS).	Agreements to procure experts or consultants (including stenographic reporters) pursuant to 2 U.S.C. 166(h)(2).
Assistant Librarian for Research Services.	Performance fees for readings, lectures, dramatic fees, and the Council of Scholars.
Director, Library Environment Resources Office.	Rental/space agreements with Government agencies.
Director, Acquisitions and Overseas Operations, Processing Services.	Agreements for bibliographic services.
Director, National Library for the Blind and Physically Handicapped.	Collection materials for the Library's blind and physically handicapped program.
Director of Publishing	Agreements directly related to publications of the Publishing Office.
Chief, Procurement and Supply Division.	All areas except materials for the Library's collections.
Chief and Assistant Chief, Order Division.	Purchased materials for the Library's collections.
Chief and Assistant Chief, Exchange and Gift Division.	Agreements involving all non-purchase materials for the Library's collections (exchanges, gifts, deposits, and so forth).
Chief, Financial Management Office and Budget Officer.	Interagency agreements, entertainment, performance of services by the Library and interdepartmental charges.
Chief, Manuscript Division.	Agreements involving the Library's literature programs (nonappropriated funds).
Chief, Music Division	Agreements involving the Library's music programs (nonappropriated funds).
Exhibits Officer	Agreements involving loans of exhibits.
Staff Training and Development Officer	Training agreements with educational institutions.

[52 FR 34383, Sept. 11, 1987]

§ 701.35 Use of the Library of Congress name.

(a) The name "Library of Congress" shall be used officially to represent the Library, its programs, projects, functions, activities, or elements thereof. The Library's name may be used only when it is in the interest of the Library. Any other use by any person(s) or organization(s), except as provided in this section, is prohibited.

(b) Any individual(s) or organization(s), outside the Library wishing to use the Library's name shall submit a written proposal, by U.S. mail or hand delivery, to the Assistant Librarian for National Programs, Library of Congress, Washington, D.C. 20540. The proposal shall be submitted at least 60 days in advance of the intended use and shall include, in addition to a copy or draft of the publicity statement, the following: (1) A detailed description of the intended use; (2) the name and telephone numbers of the individual responsible for the intended use, as well as for any arrangements and publicity associated with it; (3) the co-sponsor (if an individual or organization from outside the Library); (4) the speakers, performers (if appropriate); and (5) the date(s), location and intended distribution of publicity materials. After commenting on the appropriateness of the proposal, the Assistant Librarian for National Programs will forward the proposal to The Associate Librarian of Congress for final approval or rejection.

(c) Where the contemplated activity or intended use of the Library's name is designed to raise gift funds for the Library, there shall be three (3) additional requirements:

(1) Publicity associated with the intended use shall clearly state the objective for such funds, shall be consistent with the policy expressed in paragraph (a) of this section, and, if the funds are to benefit a specific program in the Library, the publicity shall describe that program; and

(2) No individual(s) shall financially profit from such fund-raising endeavor.

(d) Any permission(s) granted shall apply only to the specific use for which granted. There shall be no blanket or open-ended permissions granted; each intended use shall be individually considered.

(e) If, after permission is granted there is a breach or violation of any provisions or conditions of this section, The Associate Librarian of Congress shall withdraw permission and give written notice of such to the individual(s) identified in the written request as responsible for the arrangements and publicity.

(f) Whenever it is determined that any person or organization is engaged in or about to engage in an act or practice which constitutes or will constitute conduct prohibited by this section or a violation of any requirements of this section, the Library General Counsel shall take whatever steps are necessary, including seeking the assistance of the U.S. Department of Justice, to obtain injunctive relief and/or damages.

[49 FR 8606, Mar. 8, 1984, as amended at 51 FR 22075, June 18, 1986]

§ 701.36 Use of the Seal of the Library of Congress and the Library of Congress Trust Fund Board.

(a) The Seal is the official emblem of the Library of Congress and its use is therefore permitted only on official documents or publications of the Library.

(b) The Seal may be used on Library publications, leaflets, brochures, letterhead, or other printed matter prepared as official documents of the Library.

(c) The embossed Seal shall be used primarily to authenticate contracts, agreements, certifications, and other documents signed by The Librarian, or his/her designated representative(s).

(d) With the approval of The Associate Librarian of Congress, the Seal may be used in cooperative programs in which the Library officially engages with other organization(s).

(e) Any other use shall be approved in advance by The Associate Librarian of Congress.

(f) The official Seal of the Library of Congress Trust Fund Board shall be affixed to documents of that body as prescribed by The Librarian of Congress.

(g) Any person or organization that uses the Library Seal or the Seal of the Library of Congress Trust Fund Board in a manner other than as authorized by the provisions of this section shall be subject to the criminal provisions of 18 U.S.C. 1017.

[49 FR 8607, Mar. 8, 1984]

PART 702—CONDUCT ON LIBRARY PREMISES

Sec.
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702.15 Penalties.

AUTHORITY: Sec. 1, 29 Stat. 544, 546; 2 U.S.C. 136.

§ 702.1 Applicability.

The rules and regulations in this part apply to all Federal property under the charge and control of the Librarian of Congress and to all persons entering in or on such property.

[35 FR 19019, Dec. 16, 1970. Redesignated at 38 FR 27049, Sept. 28, 1973]

§ 702.2 Access to Library buildings and collections.

Admittance and movement of visitors in Library buildings will be restricted to the areas providing facilities and services to the public during announced hours of public opening. Persons having legitimate business in areas closed to the public may be admitted after identification by responsible officials in the building or by authority as evidenced by a building access pass issued by the Associate Librarian for Management.

[35 FR 19019, Dec. 16, 1970. Redesignated at 38 FR 27049, Sept. 28, 1973, and amended at 46 FR 48663, Oct. 2, 1981]

§ 702.3 Conduct on Library premises.

(a) All persons using the premises shall conduct themselves in such manner as not to affect detrimentally the peace, tranquility, and good order of the Library. Such persons shall:

(1) Use areas that are open to them only at the times those areas are open to them and only for the purposes for which those areas are intended;

(2) Comply with any lawful order of the police or of other authorized individuals; and

(3) Comply with official signs of a restrictive or directory nature.

(b) All persons using the premises shall refrain from:

(1) Creating any hazard to persons or property, such as by fighting or by throwing or deliberately dropping any breakable article, such as glass, pottery, or any sharp article, or stones or other missiles;

(2) Using Library facilities for living accommodation purposes, such as unauthorized bathing, sleeping, or storage of personal belongings, regardless of the specific intent of the individual;

(3) Engaging in inordinately loud or noisy activities;

(4) Disposing of rubbish other than in receptacles provided for that purpose;

(5) Throwing articles of any kind from or at a Library building or appurtenance;

(6) Committing any obscene or indecent act such as prurient prying, indecent exposure, and soliciting for illegal purposes;

(7) Removing, defacing, damaging, or in any other way so misusing a statue, seat, wall, fountain, or other architectural feature or any tree, shrub, plant, or turf;

(8) Stepping upon or climbing upon any statue, fountain, or other ornamental architectural feature or any tree, shrub, or plant;

(9) Bathing or swimming in any fountain;

(10) Painting, marking or writing on, or posting or otherwise affixing any handbill or sign upon any part of a Library building or appurtenance, except on bulletin boards installed for that purpose and with the appropriate authorization;

(11) Bringing any animal onto Library buildings and turf other than dogs trained to assist hearing or visually impaired persons;

(12) Threatening the physical well-being of an individual; and

(13) Unreasonably obstructing reading rooms, food service facilities, entrances, foyers, lobbies, corridors, offices, elevators, stairways, or parking lots in such manner as to impede or disrupt the performance of official duties by the Library staff or to prevent Library patrons from using or viewing the collections.

(c) Public reading rooms, research facilities, and catalog rooms are designated as nonpublic forums. As such, they shall be used only for quiet scholarly research or educational purposes requiring use of Library materials. All persons using these areas shall comply with the rules in effect in the various public reading rooms, shall avoid disturbing other readers, and shall refrain from, but not limited to,

(1) Eating, drinking, or smoking in areas where these activities are expressly prohibited;

(2) Using loud language or making disruptive noises;

(3) Using any musical instrument or device, loudspeaker, sound amplifier, or other similar machine or device for the production or reproduction of sound, except for devices to assist hearing or visually impaired persons, without authorization;

(4) Interfering by offensive personal hygiene with the use of the area by other persons;

(5) Spitting, defecating, urinating, or similar disruptive activities;

(6) Intentionally abusing the furniture or furnishings in the area;

(7) Intentionally damaging any item from the collections of the Library of Congress or any item of Library property;

(8) Using computing terminals for purposes other than searching or training persons to search the Library's data bases or those under contract to the Library, or misusing the terminals by intentional improper or obstructive searching; and

(9) Using the Library's photocopy machines for purposes other than copying Library materials whenever other persons are waiting in line.

[52 FR 672, Jan. 8, 1987]

§ 702.4 Demonstrations.

(a) Library buildings and grounds are designated as limited public forums, except for those areas designated as nonpublic forums. However, only Library grounds (defined in 2 U.S.C. 167j), not buildings, may be utilized for demonstrations, including assembling, marching, picketing, or rallying. In addition, as the need for the determination of other matters arises, The Librarian will determine what additional First Amendment activities may not be permitted in a limited public forum. In making such determination, The Librarian will consider only whether the intended activity is incompatible with the primary purpose and intended use of that area.

(b) The only areas of the Library grounds that are designated for use for demonstrations are the following:

(1) *Thomas Jefferson Building:* The Neptune Plaza and the interior sidewalks on the north and south sides of the building;

(2) *John Adams Building:* The plaza in front of the south entrance to the building; and

(3) *James Madison Building:* The portion of Independence Plaza between the pylons that demarcate the driveway and Independence Avenue, and the western and eastern ends of the plaza beyond the ramps for the handicapped.

(c) Persons seeking to use such designated areas for the purpose of demonstrations shall first secure written permission from the Associate Librarian for Management. An application for such permission shall be filed with the Library Support Services Office no later than three workdays before the time of the proposed demonstration. Permission to demonstrate shall be based upon—

(1) The availability of the requested location and

(2) The likelihood that the demonstration will not interfere with Library operations or exceed city noise limitations as defined by District of Columbia regulations (26 D.C. Reg. 229 and 24 D.C. Reg. 293).

(d) No person(s) having permission to demonstrate pursuant to this Regulation shall at any time block either the entrances to or exits from the Library buildings nor shall such person(s) harass, intimidate, or otherwise interfere with the use of the Library's facilities by persons not participating in the demonstration.

[52 FR 672, Jan. 8, 1987]

§ 702.5 Photographs.

Photographs for advertising or commercial purposes may be taken only with the permission of the Library's Information Officer. Cameras and other photographic equipment may be carried on the premises, but their use in certain areas may be restricted by rules or posted signs. Persons using still, motion picture, or video cameras with flash attachments or lights or with tripods or other stationary equipment shall obtain the prior permission of the Library's Information Officer.

[52 FR 672, Jan. 8, 1987]

§ 702.6 Gambling.

Participation in any illegal gambling, such as the operation of gambling devices, the conduct of an illegal pool or lottery, or the unauthorized sale or purchase of numbers or lottery tickets, on the premises is prohibited.

[52 FR 673, Jan. 8, 1987]

§ 702.7 Alcoholic beverages and controlled substances.

(a) The use of alcoholic beverages on the premises is prohibited except on official occasions for which advance written approval has been given by the Associate Librarian for Management and except for concessionaires to whom Library management has granted permission to sell alcoholic beverages on the premises.

(b) The illegal use or possession of controlled substances on the premises is prohibited.

[52 FR 673, Jan. 8, 1987]

§ 702.8 Weapons and explosives.

Except where duly authorized by law, and in the performance of law enforcement functions, no person shall carry firearms, other dangerous or deadly weapons, or explosives, either openly or concealed, while on the premises.

[52 FR 673, Jan. 8, 1987]

§ 702.9 Use and carrying of food and beverages in Library buildings.

Consumption of food and beverages in Library buildings is prohibited except at point of purchase or other authorized eating places. Under no circumstances may food or beverages be carried to the bookstacks or other areas where there exists significant risk to Library materials or property or where there may result a detraction from the dignity or efficiency of public service.

[35 FR 19019, Dec. 16, 1970. Redesignated at 38 FR 27049, Sept. 28, 1973 and 52 FR 672, Jan. 8, 1987]

§ 702.10 Inspection of property.

(a) Individuals entering Library buildings do so with the understanding that all property in their possession including, but not limited to, suitcases, briefcases, large envelopes, packages, and office equipment may be inspected.

(b) Upon entering the Library buildings privately owned office machines including but not limited to typewriters, computing machines, stenotype machines, and dictating machines, shall be registered at the guard's desk at the entrance to buildings for the purpose of controlling such equipment.

(c) In the discharge of official duties, Library officials are authorized to inspect Government-owned or furnished property assigned to readers and the general public for their use, such as cabinets, lockers, and desks. Unauthorized property or contraband found in the possession of members of the Library staff, readers, or the general public as a result of such inspections will be subject to confiscation by Library officials.

[35 FR 19019, Dec. 16, 1970. Redesignated at 38 FR 27049, Sept. 28, 1973 and 52 FR 672, Jan. 8, 1987]

§ 702.11 Protection of property.

(a) Any person who shall steal, wrongfully deface, injure, mutilate, tear, or destroy library materials, or any portion thereof, shall be punished by a fine of not more than $2,000 or imprisoned not more than 3 years, or both (18 U.S.C. 641; 18 U.S.C. 1361; 18 U.S.C. 2071; and 22 D.C. Code 3106).

(b) Any person who embezzles, steals, purloins, or, without authority, disposes of anything of value of the United States, or willfully injures or commits any depredation against any Government property shall be punished by a fine of not more than $10,000 or imprisoned not more than 10 years, or both; but if the value of such property does not exceed the sum of $100, he shall be fined not more than $1,000 or imprisoned not more than 1 year, or both. (18 U.S.C. 641 and 18 U.S.C. 1361.)

[35 FR 19019, Dec. 16, 1970. Redesignated at 38 FR 27049, Sept. 28, 1973, and amended at 46 FR 48664, Oct. 2, 1981; further redesignated at 52 FR 672, Jan. 8, 1987]

§ 702.12 Smoking in Library buildings.

Smoking in Library buildings is prohibited except in those areas specifically designated for this purpose.

[35 FR 19019, Dec. 16, 1970. Redesignated at 38 FR 27049, Sept. 28, 1973 and 52 FR 672, Jan. 8, 1987]

§ 702.13 Space for meetings and special events.

The use of "meeting places" in the Library shall be limited to official staff functions, or functions sponsored by the Library. The Library's facilities are not available for meetings, performances or special events that: (a) Involve any organization practicing or promoting discrimination based upon race, religion, color, sex, age, marital status, handicap, national origin, or political affiliation; (b) have a partisan political, sectarian, or similar nature or purpose; (c) are sponsored by profit-making organizations that promote commercial enterprises or commodities.

[46 FR 48664, Oct. 2, 1981. Redesignated at 52 FR 672, Jan. 8, 1987]

§ 702.14 Soliciting, vending, debt collection, and distribution of handbills.

(a) The soliciting of alms and contributions, commercial soliciting and vending of all kinds, the display or distribution of commercial advertising, the offering or exposing of any article for sale, or the collecting of private debts on the grounds or within the buildings of the Library is prohibted. This rule does not apply to national or local drive for funds for welfare, health, or other purposes sponsored or approved by The Librarian of Congress, nor does it apply to authorized concessions, vending devices in approved areas, or as specifically allowed by the Associate Librarian for Management.

(b) Distribution of material such as pamphlets, handbills, and flyers is prohibited without prior approval of the Associate Librarian for Management.

(c) Peddlers and solicitors will not be permitted to enter Library buildings unless they have a specific appointment, and they will not be permitted to canvass Library buildings.

[52 FR 673, Jan. 8, 1987]

§ 702.15 Penalties.

(a) Persons violating provisions of 2 U.S.C. 167a to 167e, inclusive, regulations promulgated pursuant to 2 U.S.C. 167f, this Regulation, or other applicable Federal laws relating to the Library's property, including its collections, are subject to removal from the premises, to arrest, and to any additional penalties prescribed by law. In instances of mutilation or theft of Library materials or other Library property, prosecution by appropriate authorities shall be in accordance with the provisions of the statutes cited in § 702.11.

(b) Upon written notification by the Associate Librarian for Management, disruptive persons may be denied further access to the premises and may be prohibited from further use of the Library's facilities.

(1) Within three workdays of receipt of such notification, an affected individual may make a written request, including the reasons for such a request, to the Associate Librarian for Management for a reconsideration of said notification.

(2) The Associate Librarian for Management shall respond within three workdays of receipt of such request for reconsideration and may, at his or her option, rescind, modify, or reaffirm said notification.

[52 FR 673, Jan. 8, 1987]

PART 703—AVAILABILITY OF LIBRARY OF CONGRESS RECORDS

Sec.

703.1 Policy.
703.2 Records covered.
703.3 Exemptions.
703.4 Procedures for inspection and copying of records.
703.5 Public reading facility.
703.6 Fees.

AUTHORITY: 2 U.S.C. 136.

SOURCE: 41 FR 2230, Jan. 15, 1976, unless otherwise noted.

§ 703.1 Policy.

Subject to limitations set forth in this part, Library of Congress records are available as hereinafter provided and shall be furnished as promptly as possible within the Library to any member of the public at appropriate places and times and at an appropriate fee, if any. Although this policy reflects the public information section of the Administrative Procedure Act (5 U.S.C. 552, et seq.) as amended, the application of that legislation to the Library of Congress is not to be inferred; nor should this document be considered as conferring on any member of the public a right under that Act of access to or information from the records of the Library.

§ 703.2 Records covered.

As used herein, Library of Congress "records" include all books, papers, maps, photographs or other documentary materials exclusive of materials in the collections of the Library of Congress, regardless of physical form or characteristics, made or received by the Library of Congress in pursuance of Federal law or in connection with the transaction of public business, and preserved, or appropriate for preservation, by the Library as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data contained therein. The term refers only to such items in being and in the possession or under the control of an office of the Library. It does not include records to be compiled or procured in the future, nor does the term include objects or articles, such as furniture, paintings, sculpture, three-dimension models, structures, vehicles, and equipment.

§ 703.3 Exemptions.

(a) The Library shall exempt from disclosure materials that are:

(1) Specifically authorized under criteria established by Executive order to be withheld from public disclosure in the interest of national defense or foreign policy and are in fact properly classified pursuant to Executive Order 11652;

(2) Related solely to the internal personnel rules and practices of the Library;

(3) Specifically exempted from disclosure by statute;

(4) Related to copyrights except as provided by 37 CFR 201.2, 203.4 and 203.5;

(5) Privileged or confidential, in that they contain trade secrets and commercial or financial information obtained from any person; this exemption pertains to information which would not customarily be made public by the person from whom it was obtained by the Government. It includes, but is not limited to, business sales statistics, inventories, customer lists, scientific or manufacturing processes or developments; information customarily subject to protection as privileged in a court or other proceeding, such as information protected by the doctor-patient, lawyer-client, or lender-borrower privilege; information submitted by any person to the Government in confidence or where the Government has obligated itself not to disclose information it received; formulate, designs, drawings, research data, and other records developed by or for the Government which are significant as items of valuable property;

(6) Contained in interagency or intragency communications, such as internal drafts, memoranda between officials or agencies, opinions and interpretations prepared by staff or consultants; records of the deliberations of staff or committees on internal matters; and records whose premature disclosure would interfere with the achievement of the purpose for which they were being prepared;

(7) Gathered, prepared, or compiled specifically for the use of the Congress by the Congressional Research Service, the Law Library, or any other subdivision of the Library;

(8) Contained in personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy;

(9) Contained in investigative records compiled for law enforcement or in files prepared in connection with Government litigation and adjudicative proceedings, except for those portions of such files which are available by law to persons in litigation with the Library;

(10) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; and

(11) Related to specific reader use of the collections, either in the Library or through lending service.

(b) Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this section. A portion of a record shall be considered reasonably segregable when segregation can produce an intelligible record which is not distorted out of context and does not contradict the record being withheld.

[41 FR 2230, Jan. 15, 1976, as amended at 46 FR 48664, Oct. 2, 1981]

§ 703.4 Procedures for inspection and copying of records.

(a) Requests to inspect or copy, or have copied, the Library's records shall be directed to the Chief, Central Services Division. Upon approval, requests for photocopying of records shall be referred to the Photoduplication Service for processing.

(b) Requests for records not available in the public reading facility (see § 703.6) shall be specific and shall identify the precise records or materials which are desired by name, date, number, or other identifying data sufficient to allow the Central Services

Division staff to locate, retrieve, and prepare the record for inspection or copying and to delete exempted matter where appropriate. Blanket or generalized requests (such as "all matters relating to" a general subject) shall not be honored, and shall be returned to the requester.

(c) Records shall be available for inspection and copying in person during the usual business hours.

(d) Records in media other than print (e.g. microforms and machine media) shall be available for inspection in the medium in which they usually exist, and copies of records in machine media shall be made in media of the Library's selection.

(e) Every effort shall be made to respond to requests with reasonable dispatch. Use of a document by the Library or its staff shall be given precedence over any request. Under no circumstances shall records be removed from the Library's offices.

(f) The Chief of the Central Services Division shall make the initial determination on whether the record described in a request can be identified and located after a reasonable search and, if so, whether the record (or portions thereof) will be made available or will be withheld from disclosure under the provisions of this regulation. In so doing, the Chief shall consult with any division or office in the Library having a continuing substantial interest in the record requested. Where the Chief finds no valid objection or doubt as to the propriety of making the requested record available, the request shall be honored upon payment of the prescribed fees (see § 703.6).

(g) A member of the public who has requested a Library record and has been refused all or part of said record by the Chief, Central Services Division, may request reconsideration by the Chief. The request shall be in writing and include a copy of the initial request as well as the reasons why the requested record, or part thereof, should be made available.

(h) The Chief, Central Services Division, shall reconsider the request and shall grant it or re-affirm the denial with reasons for such. Re-affirmed denials shall be referred to the General Counsel.

(i) The General Counsel shall make the final determination on a request for reconsideration and shall notify the requester thereof, directly, and in writing.

(1) If the final determination reverses in whole or in part the initial determination, the record requested (or portions thereof) shall be made available to the requester.

(2) If the final determination sustains in whole or in part an initial determination, the notification of the final determination shall explain the basis on which the record (or portions thereof) will not be made available.

Such decision by the General Counsel shall be the final administrative review within the Library of Congress.

[41 FR 2230, Jan. 15, 1976, as amended at 46 FR 48664, Oct. 2, 1981]

§ 703.5 Public reading facility.

(a) The Library shall maintain a reading facility for the public inspection and copying of Library regulations, opinions, statements of policy, and instructions (including staff manuals) which may be relied upon, used, or cited as authority or precedent in the determination of rights, privileges, and obligations of members of the public in dealing with the Library. This facility shall be open to the public from 8:30 a.m. to 4:30 p.m., except Saturdays, Sundays, and Holidays.

(b) The materials to be available in the public reading facility shall be selected by the General Counsel after consultation with the heads of divisions or offices which may be concerned.

(c) There shall be maintained in the reading facility for public use a current index of materials available in the reading facility.

§ 703.6 Fees.

(a) Fees charged by the Library for the search for and duplication of any records requested shall comply with the following fee schedule:

(1) *Search for records.* There shall be a fee of $7 per hour when the search is conducted by a clerical employee and

$10 per hour when the search is conducted by a professional employee. There shall be no charge for searches of less than one hour. In situations involving the use of computers to locate and extract the requested information, charges shall be based on the direct cost to the Library, including labor, material, and computer time.

(2) *Duplication of records.* Records shall be duplicated in accordance with prevailing rates established by the Photoduplication Service and by the Automated Systems Office in the case of machine media.

(3) *Other.* When no specific fee has been established for a service, the Associate Librarian for Management is authorized to establish an appropriate fee based on "direct costs" in accordance with the Office of Management and Budget Circular No. A-25.

(b) The Associate Librarian for Management may determine, in connection with specific requests for records, that the public interest is best served by the provision of the requested records at no cost or at a cost below the above fee schedule and, in those specific instances, is authorized to waive the schedule, in whole or in part.

(c) Fees actually charged a person for the search and duplication of records shall be paid in full prior to issuance of those records. Payment of fees shall be made by a personal check, postal money order or bank draft made payable to the order of the Treasurer of the United States.

[41 FR 2230, Jan. 15, 1976, as amended at 46 FR 48664, Oct. 2, 1981; 51 FR 22076, June 18, 1986]

CHAPTER VIII—ADVISORY COUNCIL ON HISTORIC PRESERVATION

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PART 800—PROTECTION OF HISTORIC AND CULTURAL PROPERTIES

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AUTHORITY: Pub. L. 89-665, 80 Stat. 915 (16 U.S.C. 470), as amended, 84 Stat. 204 (1970), 87 Stat. 139 (1973), 90 Stat. 1320 (1976), 92 Stat. 3467 (1978); E.O. 11593, 3 CFR 1971 Comp., p. 154.

SOURCE: 51 FR 31118, Sept. 2, 1986, unless otherwise noted.

Subpart A—Background and Policy

§ 800.1 Authorities, purposes, and participants.

(a) *Authorities.* Section 106 of the National Historic Preservation Act requires a Federal agency head with jurisdiction over a Federal, federally assisted, or federally licensed undertaking to take into account the effects of the agency's undertaking on properties included in or eligible for the National Register of Historic Places and, prior to approval of an undertaking, to afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking. Section 110(f) of the Act requires that Federal agency heads, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to any National Historic Landmark that may be directly and adversely affected by an undertaking and, prior to approval of such undertaking, afford the Council a reasonable opportunity to comment. These regulations define the process used by a Federal agency to meet these responsibilities, commonly called the section 106 process.

(b) *Purposes of the section 106 process.* The Council seeks through the section 106 process to accommodate historic preservation concerns with the needs of Federal undertakings. It is designed to identify potential conflicts between the two and to help resolve such conflicts in the public interest. The Council encourages this accommodation through consultation among the Agency Official, the State Historic Preservation Officer, and other interested persons during the early stages of planning. The Council regards the consultation process as an effective means for reconciling the interests of the consulting parties. Integration of the section 106 process into the normal administrative process used by agencies for project planning ensures early, systematic consideration of historic preservation issues. To this end, the Council encourages agencies to examine their administrative processes to see that they provide adequately for the efficient identification and consideration of historic properties, that they provide for participation by the State Historic Preservation Officer and others interested in historic preservation, that they provide for timely requests for Council comment, and that they promote cost-effective implementation of the section 106 process. When impediments are found to exist in the agency's administrative process, the agency is encouraged to consult with the Council to develop special section 106 procedures suited to the agency's needs.

(c) *Participants in the section 106 process*—(1) *Consulting parties.* Consulting parties are the primary participants in the section 106 process whose responsibilities are defined by these regulations. Consulting parties may include:

(i) *Agency Official.* The Agency Official with jurisdiction over an undertaking has legal responsibility for complying with section 106. It is the responsibility of the Agency Official to identify and evaluate affected historic properties, assess an undertaking's effect upon them, and afford the Council its comment opportunity. The Agency Official may use the services of grantees, applicants, consultants, or designees to prepare the necessary information and analyses, but remains responsible for section 106 compliance. The Agency Official should involve applicants for Federal assistance or approval in the section 106 process as appropriate in the manner set forth below.

(ii) *State Historic Preservation Officer.* The State Historic Preservation Officer coordinates State participation in the implementation of the National Historic Preservation Act and is a key participant in the section 106 process. The role of the State Historic Preservation Officer is to consult with and assist the Agency Official when identifying historic properties, assessing effects upon them, and considering alternatives to avoid or reduce those effects. The State Historic Preservation Officer reflects the interests of the State and its citizens in the preservation of their cultural heritage and helps the Agency Official identify those persons interested in an undertaking and its effects upon historic properties. When the State Historic Preservation Officer declines to participate or does not respond within 30 days to a written request for participation, the Agency Official shall consult with the Council, without the State Historic Preservation Officer, to complete the section 106 process. The State Historic Preservation Officer may assume primary responsibility for reviewing Federal undertakings in the State by agreement with the Council as prescribed in § 800.7 of these regulations.

(iii) *Council.* The Council is responsible for commenting to the Agency Official on an undertaking that affects historic properties. The official authorized to carry out the Council's responsibilities under each provision of the regulations is set forth in a separate, internal delegation of authority.

(2) *Interested persons.* Interested persons are those organizations and individuals that are concerned with the effects of an undertaking on historic properties. Certain provisions in these regulations require that particular interested persons be invited to become consulting parties under certain circumstances. In addition, whenever the Agency Official, the State Historic Preservation Officer, and the Council, if participating, agree that active participation of an interested person will advance the objectives of section 106, they may invite that person to become a consulting party. Interested persons may include:

(i) *Local governments.* Local governments are encouraged to take an active role in the section 106 process when undertakings affect historic properties within their jurisdiction. When a local government has legal responsibility for section 106 compliance under programs such as the Community Development Block Grant Program, participation as a consulting party is required. When no such legal responsibility exists, the extent of local government participation is at the discretion of local government officials. If the State Historic Preservation Officer, the appropriate local government, and the Council agree, a local government whose historic preservation program has been certified pursuant to section 101(c)(1) of the Act may assume any of the duties that are given to the State Historic Preservation Officer by these regulations or that originate from agreements concluded under these regulations.

(ii) *Applicants for Federal assistance, permits, and licenses.* When the undertaking subject to review under section 106 is proposed by an applicant for Federal assistance or for a Federal permit or license, the applicant may choose to participate in the section 106 process in the manner prescribed in these regulations.

(iii) *Indian tribes.* The Agency Official, the State Historic Preservation Officer, and the Council should be sensitive to the special concerns of Indian tribes in historic preservation issues, which often extend beyond Indian lands to other historic properties. When an undertaking will affect

Indian lands, the Agency Official shall invite the governing body of the responsible tribe to be a consulting party and to concur in any agreement. When an Indian tribe has established formal procedures relating to historic preservation, the Agency Official, State Historic Preservation Officer, and Council shall, to the extent feasible, carry out responsibilities under these regulations consistent with such procedures. An Indian tribe may participate in activities under these regulations in lieu of the State Historic Preservation Officer with respect to undertakings affecting its lands, provided the Indian tribe so requests, the State Historic Preservation Officer concurs, and the Council finds that the Indian tribe's procedures meet the purposes of these regulations. When an undertaking may affect properties of historic value to an Indian tribe on non-Indian lands, the consulting parties shall afford such tribe the opportunity to participate as interested persons. Traditional cultural leaders and other Native Americans are considered to be interested persons with respect to undertakings that may affect historic properties of significance to such persons.

(iv) *The public.* The Council values the views of the public on historic preservation questions and encourages maximum public participation in the section 106 process. The Agency Official, in the manner described below, and the State Historic Preservation Officer should seek and consider the views of the public when taking steps to identify historic properties, evaluate effects, and develop alternatives. Public participation in the section 106 process may be fully coordinated with, and satisfied by, public participation programs carried out by Agency Officials under the authority of the National Environmental Policy Act and other pertinent statutes. Notice to the public under these statutes should adequately inform the public of preservation issues in order to elicit public views on such issues that can then be considered and resolved, when possible, in decisionmaking. Members of the public with interests in an undertaking and its effects on historic properties should be given reasonable opportunity to have an active role in the section 106 process.

§ 800.2 Definitions.

(a) "Act" means the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470-470w-6.

(b) "Agency Official" means the Federal agency head or a designee with authority over a specific undertaking, including any State or local government official who has been delegated legal responsibility for compliance with section 106 and section 110(f) in accordance with law.

(c) "Area of potential effects" means the geographic area or areas within which an undertaking may cause changes in the character or use of historic properties, if any such properties exist.

(d) "Council" means the Advisory Council on Historic Preservation or a Council member or employee designated to act for the Council.

(e) "Historic property" means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register. This term includes, for the purposes of these regulations, artifacts, records, and remains that are related to and located within such properties. The term "eligible for inclusion in the National Register" includes both properties formally determined as such by the Secretary of the Interior and all other properties that meet National Register listing criteria.

(f) "Indian lands" means all lands under the jurisdiction or control of an Indian tribe.

(g) "Indian tribe" means the governing body of any Indian tribe, band, nation, or other group that is recognized as an Indian tribe by the Secretary of the Interior and for which the United States holds land in trust or restricted status for that entity or its members. Such term also includes any Native village corporation, regional corporation, and Native Group established pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1701, *et seq.*

(h) "Interested person" means those organizations and individuals that are concerned with the effects of an undertaking on historic properties.

(i) "Local government" means a city, county, parish, township, municipality, borough, or other general purpose political subdivision of a State.

(j) "National Historic Landmark" means a historic property that the Secretary of the Interior has designated a National Historic Landmark.

(k) "National Register" means the National Register of Historic Places maintained by the Secretary of the Interior.

(l) "National Register Criteria" means the criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register (36 CFR Part 60).

(m) "Secretary" means the Secretary of the Interior.

(n) "State Historic Preservation Officer" means the official appointed or designated pursuant to section 101(b)(1) of the Act to administer the State historic preservation program or a representative designated to act for the State Historic Preservation Officer.

(o) "Undertaking" means any project, activity, or program that can result in changes in the character or use of historic properties, if any such historic properties are located in the area of potential effects. The project, activity, or program must be under the direct or indirect jurisdiction of a Federal agency or licensed or assisted by a Federal agency. Undertakings include new and continuing projects, activities, or programs and any of their elements not previously considered under section 106.

Subpart B—The Section 106 Process

§ 800.3 General.

(a) *Scope.* The procedure in this subpart guides Agency Officials, State Historic Preservation Officers, and the Council in the conduct of the section 106 process. Alternative methods of meeting section 106 obligations are found in § 800.7, governing review of undertakings in States that have entered into agreements with the Council for section 106 purposes, and § 800.13, governing Programmatic Agreements with Federal agencies that pertain to specific programs or activities. Under each of these methods, the Council encourages Federal agencies to reach agreement on developing alternatives or measures to avoid or reduce effects on historic properties that meet both the needs of the undertaking and preservation concerns.

(b) *Flexible application.* The Council recognizes that the procedures for the Agency Official set forth in these regulations may be implemented by the Agency Official in a flexible manner relfecting differing program requirements, as long as the purposes of section 106 of the Act and these regulations are met.

(c) *Timing.* Section 106 requires the Agency Official to complete the section 106 process prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license or permit. The Council does not interpret this language to bar an Agency Official from expending funds on or authorizing nondestructive planning activities preparatory to an undertaking before complying with section 106, or to prohibit phased compliance at different stages in planning. The Agency Official should ensure that the section 106 process is initiated early in the planning stages of the undertaking, when the widest feasible range of alternatives is open for consideration. The Agency Official should establish a schedule for completing the section 106 process that is consistent with the planning and approval schedule for the undertaking.

§ 800.4 Identifying historic properties.

(a) *Assessing information needs.* (1) Following a determination by the Agency Official that a proposed project, activity, or program constitutes an undertaking and after establishing the undertaking's area of potential effects, the Agency Official shall:

(i) Review existing information on historic properties potentially affected by the undertaking, including any data concerning the likelihood that undentified historic properties exist in the area of potential effects;

(ii) Request the views of the State Historic Preservation Officer on further actions to identify historic properties that may be affected; and

(iii) Seek information in acordance with agency planning processes from local governments, Indian tribes, public and private organizations, and other parties likely to have knowledge of or concerns with historic properties in the area.

(2) Based on this assessment, the Agency Official should determine any need for further actions, such as field surveys and predictive modeling, to identify historic properties.

(b) *Locating historic properties.* In consultation with the State Historic Preservation Officer, the Agency Official shall make a reasonable and good faith effort to identify historic properties that may be affected by the undertaking and gather sufficient information to evaluate the eligibility of these properties for the National Register. Efforts to identify historic properties should follow the Secretary's "Standards and Guidelines for Archeology and Historic Preservation" (48 FR 44716) and agency programs to meet the requirements of section 110(a)(2) of the Act.

(c) *Evaluating historical significance.* (1) In consultation with the State Historic Preservation Officer and following the Secretary's Standards and Guidelines for Evaluation, the Agency Official shall apply the National Register Criteria to properties that may be affected by the undertaking and that have not been previously evaluated for National Register eligibility. The passage of time or changing perceptions of significance may justify reevaluation of properties that were previously determined to be eligible or ineligible.

(2) If the Agency Official and the State Historic Preservation Officer agree that a property is eligible under the criteria, the property shall be considered eligible for the National Register for section 106 purposes.

(3) If the Agency Official and the State Historic Preservation Officer agree that the criteria are not met, the property shall be considered not eligible for the National Register for section 106 purposes.

(4) If the Agency Official and the State Historic Preservation Officer do not agree, or if the Council or the Secretary so request, the Agency Official shall obtain a determination from the Secretary of the Interior pursuant to the applicable National Park Service regulations.

(5) If the State Historic Preservation Officer does not provide views, then the State Historic Preservation Officer is presumed to agree with the Agency Official's determination for the purpose of this subsection.

(d) *When no historic properties are found.* If the Agency Official determines in accordance with § 800.4 paragraphs (a) through (c) that there are no historic properties that may be affected by the undertaking, the Agency Official shall provide documentation of this finding to the State Historic Preservation Officer. The Agency Official should notify interested persons and parties known to be interested in the undertaking and its possible effects on historic properties and make the documentation available to the public. In these circumstances, the Agency Official is not required to take further steps in the section 106 process.

(e) *When historic properties are found.* If there are historic properties that the undertaking may affect, the Agency official shall assess the effects in accordance with § 800.5.

§ 800.5 Assessing effects.

(a) *Applying the Criteria of Effect.* In consultation with the State Historic Preservation Officer, the Agency Official shall apply the Criteria of Effect (§ 800.9(a)) to historic properties that may be affected, giving consideration to the views, if any, of interested persons.

(b) *When no effect is found.* If the Agency Official finds the undertaking will have no effect on historic properties, the Agency Official shall notify the State Historic Preservation Officer and interested persons who have made their concerns known to the Agency Official and document the findings, which shall be available for public inspection. Unless the State Historic Preservation Officer objects within 15 days of receiving such notice, the Agency Official is not required to take any further steps in the section 106 process. If the State Historic Preservation Officer files a timely objection, then the procedures described in § 800.5(c) are followed.

(c) *When an effect is found.* If an effect on historic properties is found, the Agency Official, in consultation with the State Historic Preservation Officer, shall apply the Criteria of Adverse Effect (§ 800.9(b)) to determine whether the effect of the undertaking should be considered adverse.

(d) *When the effect is not considered adverse.* (1) If the Agency Official finds the effect is not adverse, the Agency Official shall:

(i) Obtain the State Historic Preservation Officer's concurrence with the finding and notify and submit to the Council summary documentation, which shall be available for public inspection; or

(ii) Submit the finding with necessary documentation (§ 800.8(a)) to the Council for a 30-day review period and notify the State Historic Preservation Officer.

(2) If the Council does not object to the finding of the Agency Official within 30 days of receipt of notice, or if the Council objects but proposes changes that the Agency Official accepts, the Agency Official is not required to take any further steps in the section 106 process other than to comply with any agreement with the State Historic Preservation Officer or Council concerning the undertaking. If the Council objects and the Agency Official does not agree with changes proposed by the Council, then the effect shall be considered as adverse.

(e) *When the effect is adverse.* If an adverse effect on historic properties is found, the Agency Official shall notify the Council and shall consult with the State Historic Preservation Officer to seek ways to avoid or reduce the effects on historic properties. Either the Agency Official or the State Historic Preservation Officer may request the Council to participate. The Council may participate in the consultation without such a request.

(1) *Involving interested persons.* Interested persons shall be invited to participate as consulting parties as follows when they so request:

(i) The head of a local government when the undertaking may affect historic properties within the local government's jurisdiction;

(ii) The representative of an Indian tribe in accordance with § 800.1(c)(2)(iii);

(iii) Applicants for or holders of grants, permits, or licenses, and owners of affected lands; and

(iv) Other interested persons when jointly determined appropriate by the Agency Official, the State Historic Preservation Officer, and the Council, if participating.

(2) *Documentation.* The Agency Official shall provide each of the consulting parties with the documentation set forth in § 800.8(b) and such other documentation as may be developed in the course of consultation.

(3) *Informing the public.* The Agency Official shall provide an adequate opportunity for members of the public to receive information and express their views. The Agency Official is encouraged to use existing agency public involvement procedures to provide this opportunity. The Agency Official, State Historic Preservation Officer, or the Council may meet with interested members of the public or conduct a public information meeting for this purpose.

(4) *Agreement.* If the Agency Official and the State Historic Preservation Officer agree upon how the effects will be taken into account, they shall execute a Memorandum of Agreement. When the Council participates in the consultation, it shall execute the Memorandum of Agreement along with the Agency Official and the State Historic Preservation Officer. When the Council has not participated in consultation, the Memorandum of Agreement shall be submitted to the Council for comment in accordance with § 800.6(a). As appropriate, the Agency Official, the State Historic Preservation Officer, and the Council, if participating, may agree to invite other consulting parties to concur in the agreement.

(5) *Amendments.* The Agency Official, the State Historic Preservation Officer, and the Council, if it was a signatory to the original agreement, may subsequently agree to an amendment to the Memorandum of Agreement. When the Council is not a party to the Memorandum of Agreement, or the Agency Official and the State Historic Preservation Officer cannot agree on changes to the Memorandum of Agreement, the proposed changes shall be submitted to the Council for comment in accordance with § 800.6.

(6) *Ending consultation.* The Council encourages Agency Officials and State Historic Preservation Officers to utilize the consultation process to the fullest extent practicable. After initiating consultation to seek ways to reduce or avoid effects on historic properties, State Historic Preservation Officer, the Agency Official, or the Council, at its discretion, may state that further consultation will not be productive and thereby terminate the consultation process. The Agency Official shall then request the Council's comments in accordance with § 800.6(b) and notify all other consulting parties of its requests.

§ 800.6 Affording the Council an opportunity to comment.

(a) *Review of a Memorandum of Agreement.* (1) When an Agency Official submits a Memorandum of Agreement accompanied by the documentation specified in § 800.8 (b) and (c), the Council shall have 30 days from receipt to review it. Before this review period ends, the Council shall:

(i) Accept the Memorandum of Agreement, which concludes the section 106 process, and informs all consulting parties; or

(ii) Advise the Agency Official of changes to the Memorandum of Agreement that would make it acceptable; subsequent agreement by the Agency Official, the State Historic Preservation Officer, and the Council concludes the section 106 process; or

(iii) Decide to comment on the undertaking, in which case the Council shall provide its comments within 60 days of receiving the Agency Official's submission, unless the Agency Official agrees otherwise.

(2) If the Agency Official, the State Historic Preservation Officer, and the Council do not reach agreement in accordance with § 800.6(a)(1)(ii), the Agency Official shall notify the Council, which shall provide its comments within 30 days of receipt of notice.

(b) *Comment when there is no agreement.* (1) When no Memorandum of Agreement is submitted, the Agency Official shall request Council comment and provide the documentation specified in § 800.8(d). When requested by the Agency Official, the Council shall provide its comments within 60 days of receipt of the Agency Official's request and the specified documentation.

(2) The Agency Official shall make a good faith effort to provide reasonably available additional information concerning the undertaking and shall assist the Council in arranging an onsite inspection and public meeting when requested by the Council.

(3) The Council shall provide its comments to the head of the agency requesting comment. Copies shall be provided to the State Historic Preservation Officer, interested persons, and others as appropriate.

(c) *Response to Council comment.* (1) When a Memorandum of Agreement becomes final in accordance with § 800.6(a)(1) (i) or (ii), the Agency Official shall carry out the undertaking in accordance with the terms of the agreement. This evidences fulfillment of the agency's section 106 responsibilities. Failure to carry out the terms of a Memorandum of Agreement requires the Agency Official to resubmit the undertaking to the Council for comment in accordance with § 800.6.

(2) When the Council had commented pursuant to § 800.6(b), the Agency Official shall consider the Council's comments in reaching a final decision on the proposed undertaking. The Agency Official shall report the decision to the Council, and if possible, should do so prior to initiating the undertaking.

(d) *Foreclosure of the Council's opportunity to comment.* (1) The Council may advise an Agency Official that it considers the agency has not provided the Council a reasonable opportunity to comment. The decision to so advise the Agency Official will be reached by a majority vote of the Council or by a majority vote of a panel consisting of three or more Council members with the concurrence of the Chairman.

(2) The Agency Official will be given notice and a reasonable opportunity to respond prior to a proposed Council determination that the agency has foreclosed the Council's opportunity to comment.

(e) *Public requests to the Council.* (1) When requested by any person, the Council shall consider an Agency Official's finding under §§ 800.4(b), 800.4(c), 800.4(d), or 800.5(b), and, within 30 days of receipt of the request, advise the Agency Official, the State Historic Preservation Officer, and the person making the request of its views of the Agency Official's finding.

(2) In light of the Council views, the Agency Official should reconsider the finding. However, an inquiry to the Council will not suspend action on an undertaking.

(3) When the finding concerns the eligibility of a property for the National Register, the Council shall refer the matter to the Secretary.

[51 FR 31118, Sept. 2, 1986; 52 FR 25376, July 7, 1987]

§ 800.7 Agreements with States for section 106 reviews.

(a) *Establishment of State agreements.* (1) Any State Historic Preservation Officer may enter into an agreement with the Council to substitute a State review process for the procedures set forth in these regulations, provided that:

(i) The State historic preservation program has been approved by the Secretary pursuant to section 101(b)(1) of the Act; and

(ii) The Council, after analysis of the State's review process and consideration of the views of Federal and State agencies, local governments, Indian tribes, and the public, determines that the State review process is at least as effective as, and no more burdensome than, the procedures set forth in these regulations in meeting the requirements of section 106.

(2) The Council, in analyzing a State's review process pursuant to § 800.7(a)(1)(ii), shall:

(i) Review relevant State laws, Executive orders, internal directives, standards, and guidelines;

(ii) Review the organization of the State's review process;

(iii) Solicit and consider the comments of Federal and State agencies, local governments, Indian tribes, and the public;

(iv) Review the results of program reviews carried out by the Secretary; and

(v) Review the record of State participation in the section 106 process.

(3) The Council will enter into an agreement with a State under this section only upon determining, at minimum, that the State has a demonstrated record of performance in the section 106 process and the capability to administer a comparable process at the State level.

(4) A State agreement shall be developed through consultation between the State Historic Preservation Officer and the Council and concurred in by the Secretary before submission to the Council for approval. The Council may invite affected Federal and State agencies, local governments, Indian tribes, and other interested persons to participate in this consultation. The agreement shall:

(i) Specify the historic preservation review process employed in the State, showing that this process is at least as effective as, and no more burdensome than, that set forth in these regulations;

(ii) Establish special provisions for participation of local governments or Indian tribes in the review of undertakings falling within their jurisdiction, when appropriate;

(iii) Establish procedures for public participation in the State review process;

(iv) Provide for Council review of actions taken under its terms, and for appeal of such actions to the Council; and

(v) Be certified by the Secretary as consistent with the Secretary's Standards and Guidelines for Archaeology and Historic Preservation.

(5) Upon concluding a State agreement, the Council shall publish notice of its execution in the FEDERAL REGISTER and make copies of the State agreement available to all Federal agencies.

(b) *Review of undertakings when a State agreement is in effect.* (1) When a State agreement under § 800.7(a) is in effect, an Agency Official may elect to comply with the State review process in lieu of compliance with these regulations.

(2) At any time during review of an undertaking under a State agreement, an Agency Official may terminate such review and comply instead with §§ 800.4 through 800.6 of these regulations.

(3) At any time during review of an undertaking under a State agreement, the Council may participate. Participants are encouraged to draw upon the Council's expertise as appropriate.

(c) *Monitoring and termination of State agreements.* (1) The Council shall monitor activities carried out under State agreements, in coordination with the Secretary of the Interior's approval of State programs under section 101(b)(1) of the Act. The Council may request that the Secretary monitor such activities on its behalf.

(2) The Council may terminate a State agreement after consultation with the State Historic Preservation Officer and the Secretary.

(3) A State agreement may be terminated by the State Historic Preservation Officer.

(4) When a State agreement is terminated pursuant to § 800.7(c) (2) and (3), such termination shall have no effect on undertakings for which review under the agreement was complete or in progress at the time the termination occurred.

§ 800.8 Documentation requirements.

(a) *Finding of no adverse effect.* The purpose of this documentation is to provide sufficient information to explain how the Agency Official reached the finding of no adverse effect. The required documentation is as follows:

(1) A description of the undertaking, including photographs, maps, and drawings, as necessary;

(2) A description of historic properties that may be affected by the undertaking;

(3) A description of the efforts used to identify historic properties;

(4) A statement of how and why the criteria of adverse effect were found inapplicable; and

(5) The views of the State Historic Preservation Officer, affected local governments, Indian tribes, Federal agencies, and the public, if any were provided, as well as a description of the means employed to solicit those views.

(b) *Finding of adverse effect.* The required documentation is as follows:

(1) A description of the undertaking, including photographs, maps, and drawings, as necessary;

(2) A description of the efforts to identify historic properties;

(3) A description of the affected historic properties, using materials already compiled during the evaluation of significance, as appropriate; and

(4) A description of the undertaking's effects on historic properties.

(c) *Memorandum of Agreement.* When a memorandum is submitted for review in accordance with § 800.6(a)(1), the documentation, in addition to that specified in § 800.8(b), shall also include a description and evaluation of any proposed mitigation measures or alternatives that were considered to deal with the undertaking's effects and a summary of the views of the State Historic Preservation Officer and any interested persons.

(d) *Requests for comment when there is no agreement.* The purpose of this documentation is to provide the Council with sufficient information to make an independent review of the undertaking's effects on historic properties as the basis for informed and meaningful comments to the Agency Official. The required documentation is as follows:

(1) A description of the undertaking, with photographs, maps, and drawings, as necessary;

(2) A description of the efforts to identify historic properties;

(3) A description of the affected historic properties, with information on

the significant characteristics of each property;

(4) A description of the effects of the undertaking on historic properties and the basis for the determinations;

(5) A description and evaluation of any alternatives or mitigation measures that the Agency Official proposes for dealing with the undertaking's effects;

(6) A description of any alternatives or mitigation measures that were considered but not chosen and the reasons for their rejection;

(7) Documentation of consultation with the State Historic Preservation Officer regarding the identification and evaluation of historic properties, assessment of effect, and any consideration of alternatives or mitigation measures;

(8) A description of the Agency Official's efforts to obtain and consider the views of affected local governments, Indian tribes, and other interested persons;

(9) The planning and approval schedule for the undertaking; and

(10) Copies or summaries of any written views submitted to the Agency Official concerning the effects of the undertaking on historic properties and alternatives to reduce or avoid those effects.

§ 800.9 Criteria of effect and adverse effect.

(a) An undertaking has an effect on a historic property when the undertaking may alter characteristics of the property that may qualify the property for inclusion in the National Register. For the purpose of determining effect, alteration to features of a property's location, setting, or use may be relevant depending on a property's significant characteristics and should be considered.

(b) An undertaking is considered to have an adverse effect when the effect on a historic property may diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Adverse effects on historic properties include, but are not limited to:

(1) Physical destruction, damage, or alteration of all or part of the property;

(2) Isolation of the property from or alteration of the character of the property's setting when that character contributes to the property's qualification for the National Register;

(3) Introduction of visual, audible, or atmospheric elements that are out of character with the property or alter its setting;

(4) Neglect of a property resulting in its deterioration or destruction; and

(5) Transfer, lease, or sale of the property.

(c) Effects of an undertaking that would otherwise be found to be adverse may be considered as being not adverse for the purpose of these regulations:

(1) When the historic property is of value only for its potential contribution to archeological, historical, or architectural research, and when such value can be substantially preserved through the conduct of appropriate research, and such research is conducted in accordance with applicable professional standards and guidelines;

(2) When the undertaking is limited to the rehabilitation of buildings and structures and is conducted in a manner that preserves the historical and architectural value of affected historic property through conformance with the Secretary's "Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings", or

(3) When the undertaking is limited to the transfer, lease, or sale of a historic property, and adequate restrictions or conditions are included to ensure preservation of the property's significant historic features.

Subpart C—Special Provisions

§ 800.10 Protecting National Historic Landmarks.

Section 110(f) of the Act requires that the Agency Official, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to any National Historic Landmark that may be directly and adversely affected by an undertaking. When commenting on such undertakings, the Council shall use the process set forth in §§ 800.4 through 800.6 and give special consideration to protecting National Historic Landmarks as follows:

(a) Any consultation conducted under § 800.5(e) shall include the Council;

(b) The Council may request the Secretary under section 213 of the Act to provide a report to the Council detailing the significance of the property, describing the effects of the undertaking on the property, and recommending measures to avoid, minimize, or mitigate adverse effects; and

(c) The Council shall report its comments, including Memoranda of Agreement, to the President, the Congress, the Secretary, and the head of the agency responsible for the undertaking.

[51 FR 31118, Sept. 2, 1986; 52 FR 25376, July 7, 1987]

§ 800.11 Properties discovered during implementation of an undertaking.

(a) *Planning for discoveries.* When the Agency Official's identification efforts in accordance with § 800.4 indicate that historic properties are likely to be discovered during implementation of an undertaking, the Agency Official is encouraged to develop a plan for the treatment of such properties if discovered and include this plan in any documentation prepared to comply with § 800.5.

(b) *Federal agency responsibilities.* (1) When an Agency Official has completed the section 106 process and prepared a plan in accordance with § 800.11(a), the Agency Official shall satisfy the requirements of section 106 concerning properties discovered during implementation of an undertaking by following the plan.

(2) When an Agency Official has completed the section 106 process without preparing a plan in accordance with § 800.11(a) and finds after beginning to carry out the undertaking that the undertaking will affect a previously unidentified property that may be eligible for inclusion in the National Register, or affect a known historic property in an unanticipated manner, the Agency Official shall afford the Council an opportunity to comment by choosing one of the following courses of action:

(i) Comply with § 800.6;

(ii) Develop and implement actions that take into account the effects of the undertaking on the property to the extent feasible and the comments from the State Historic Preservation Officer and the Council pursuant to § 800.11(c); or

(iii) If the property is principally of archeological value and subject to the requirements of the Archeological and Historic Preservation Act, 16 U.S.C. 469(a)-(c), comply with that Act and implementing regulations instead of these regulations.

(3) Section 106 and these regulations do not require the Agency Official to stop work on the undertaking. However, depending on the nature of the property and the undertaking's apparent effects on it, the Agency Official should make reasonable efforts to avoid or minimize harm to the property until the requirements of this section are met.

(c) *Council comments.* (1) When comments are requested pursuant to § 800.11(b)(2)(i), the Council will provide its comments in a time consistent with the Agency Official's schedule, regardless of longer time periods allowed by these regulations for Council review.

(2) When an Agency Official elects to comply with § 800.11(b)(2)(ii), the Agency Official shall notify the State Historic Preservation Officer and the Council at the earliest possible time, describe the actions proposed to take effects into account, and request the Council's comments. The Council shall provide interim comments to the Agency Official within 48 hours of the request and final comments to the Agency Official within 30 days of the request.

(3) When an Agency Official complies with § 800.11(b)(2)(iii), the Agency Official shall provide the State Historic Preservation Officer an opportunity to comment on the work undertaken and provide the Council with a report on the work after it is undertaken.

(d) *Other considerations.* (1) When a newly discovered property has not previously been included in or determined eligible for the National Register, the Agency Official may assume the property to be eligible for purposes of section 106.

(2) When a discovery occurs and compliance with this section is necessary on lands under the jurisdiction of an Indian tribe, the Agency Official shall consult with the Indian tribe during implementation of this section's requirements.

§ 800.12 Emergency undertakings.

(a) When a Federal agency head proposes an emergency action and elects to waive historic preservation responsibilities in accordance with 36 CFR 78.3, the Agency Official may comply with the requirements of 36 CFR Part 78 in lieu of these regulations. An Agency Official should develop plans for taking historic properties into account during emergency operations. At the request of the Agency Official, the Council will assist in the development of such plans.

(b) When an Agency Official proposes an emergency undertaking as an essential and immediate response to a disaster declared by the President or the appropriate Governor, and § 800.12(a) does not apply, the Agency Official may satisfy section 106 by notifying the Council and the appropriate State Historic Preservation Officer of the emergency undertaking and affording them an opportunity to comment within seven days if the Agency Official considers that circumstances permit.

(c) For the purposes of activities assisted under Title I of the Housing and Community Development Act of 1974, as amended, § 800.12(b) also applies to an imminent threat to public health or safety as a result of natural disaster or emergency declared by a local government's chief executive officer or legislative body, provided that if the Council or the State Historic Preservation Officer objects, the Agency Official shall comply with §§ 800.4 through 800.6.

(d) This section does not apply to undertakings that will not be implemented within 30 days after the disaster or emergency. Such undertakings shall be reviewed in accordance with §§ 800.4 through 800.6.

[51 FR 31118, Sept. 2, 1986; 52 FR 25376, July 7, 1987]

§ 800.13 Programmatic Agreements.

(a) *Application.* An Agency Official may elect to fulfill an agency's section 106 responsibilities for a particular program, a large or complex project, or a class of undertakings that would otherwise require numerous individual requests for comments through a Programmatic Agreement. Programmatic Agreements are appropriate for programs or projects:

(1) When effects on historic properties are similar and repetitive or are multi-State or national in scope;

(2) When effects on historic properties cannot be fully determined prior to approval;

(3) When non-Federal parties are delegated major decisionmaking responsibilities;

(4) That involve development of regional or land-management plans; or

(5) That involve routine management activities at Federal installations.

(b) *Consultation process.* The Council and the Agency Official shall consult to develop a Programmatic Agreement. When a particular State is affected, the appropriate State Historic Preservation Officer shall be a consulting party. When the agreement involves issues national in scope, the President of the National Conference of State Historic Preservation Officers or a designated representative shall be invited to be a consulting party by the Council. The Council and the Agency Official may agree to invite other Federal agencies or others to be consulting parties or to participate, as appropriate.

(c) *Public involvement.* The Council, with the assistance of the Agency Official, shall arrange for public notice and involvement appropriate to the subject matter and the scope of the program. Views from affected units of State and local government, Indian tribes, industries, and organizations will be invited.

(d) *Execution of the Programmatic Agreement.* After consideration of any comments received and reaching final agreement, the Council and the Agency Official shall execute the agreement. Other consulting parties may sign the Programmatic Agreement as appropriate.

(e) *Effect of the Programmatic Agreement.* An approved Programmatic Agreement satisfies the Agency's section 106 responsibilities for all individual undertakings carried out in accordance with the agreement until it expires or is terminated.

(f) *Notice.* The Council shall publish notice of an approved Programmatic Agreement in the FEDERAL REGISTER and make copies readily available to the public.

(g) *Failure to carry out a Programmatic Agreement.* If the terms of a Programmatic Agreement are not carried out or if such an agreement is terminated, the Agency Official shall comply with §§ 800.4 through 800.6 with regard to individual undertakings covered by the agreement.

§ 800.14 Coordination with other authorities.

To the extent feasible, Agency Officials, State Historic Preservation Officers, and the Council should encourage coordination of implementation of these regulations with the steps taken to satisfy other historic preservation and environmental authorities by:

(a) Integrating compliance with these regulations with the processes of environmental review carried out pursuant to the National Environmental Policy Act, and coordinating any studies needed to comply with these regulations with studies of related natural and social aspects;

(b) Designing determinations and agreements to satisfy the terms not only of section 106 and these regulations, but also of the requirements of such other historic preservation authorities as the Archeological and Historic Preservation Act, the Archeological Resources Protection Act, section 110 of the National Historic Preservation Act, and section 4(f) of the Department of Transportation Act, as applicable, so that a single document can be used for the purposes of all such authorities;

(c) Designing and executing studies, surveys, and other information-gathering activities for planning and undertaking so that the resulting information and data is adequate to meet the requirements of all applicable Federal historic preservation authorities; and

(d) Using established agency public involvement processes to elicit the views of the concerned public with regard to an undertaking and its effects on historic properties.

§ 800.15 Counterpart regulations.

In consultation with the Council, agencies may develop counterpart regulations to carry out the section 106 process. When concurred in by the Council, such counterpart regulations shall stand in place of these regulations for the purposes of the agency's compliance with section 106.

PART 801—HISTORIC PRESERVATION REQUIREMENTS OF THE URBAN DEVELOPMENT ACTION GRANT PROGRAM

Sec.
801.1 Purpose and authorities.
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APPENDIX 1—IDENTIFICATION OF PROPERTIES: GENERAL
APPENDIX 2—SPECIAL PROCEDURES FOR IDENTIFICATION AND CONSIDERATION OF ARCHEOLOGICAL PROPERTIES IN AN URBAN CONTEXT

AUTHORITY: Pub. L. 89-665, 80 Stat. 915 (16 U.S.C. 470); Pub. L. 94-422, 90 Stat. 1320 (16 U.S.C. 470(i)); Pub. L. 96-399, 94 Stat. 1619 (42 U.S.C. 5320).

SOURCE: 46 FR 42428, Aug. 20, 1981, unless otherwise noted.

§ 801.1 Purpose and authorities.

(a) These regulations are required by section 110(c) of the Housing and Community Development Act of 1980 (HCDA) (42 U.S.C. 5320) and apply only to projects proposed to be funded by the Department of Housing and Urban Development (HUD) under the Urban Development Action Grant

(UDAG) Program authorized by Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301). These regulations establish an expedited process for obtaining the comments of the Council specifically for the UDAG program and, except as specifically provided, substitute for the Council's regulations for the "Protection of Historic and Cultural Properties" (36 CFR Part 800).

(b) Section 110(c) of the HCDA of 1980 requires UDAG applicants to: (1) Identify all properties, if any, which are included in the National Register of Historic Places and which will be affected by the project for which the application is made; (2) identify all other properties, if any, which will be affected by such project and which, as determined by the applicant, may meet the Criteria established by the Secretary of the Interior for inclusion in the National Register (36 CFR 60.6); and (3) provide a description of the effect, as determined by the applicant, of the project on properties identified pursuant to (1) and (2). If the applicant determines that such properties are affected, the Act requires that the information developed by the applicant must be forwarded to the appropriate State Historic Preservation Officer (SHPO) for review and to the Secretary of the Interior for a determination as to whether the affected properties are eligible for inclusion in the National Register.

(c) Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), requires the head of any Federal agency with jurisdiction over a Federal, federally assisted or federally licensed undertaking that affects a property included in or eligible for inclusion in the National Register of Historic Places to take into account the effect of the undertaking on such property and afford the Council a reasonable opportunity to comment. Under the UDAG program, applicants assume the status of a Federal agency for purposes of complying with section 106.

§ 801.2 Definitions.

The terms defined in 36 CFR 800.2 shall be used in conjunction with this regulation. Furthermore, as used in these regulations:

(a) "Urban Development Action Grant (UDAG) Program" means the program of the Department of Housing and Urban Development (HUD) authorized by Title I of the Housing and Community Development Act (HCDA) of 1977 (42 U.S.C. 5318) to assist revitalization efforts in distressed cities and urban counties which require increased public and private investment.

(b) "Applicant" means cities and urban counties or Pocket of Poverty Communities which meet the criteria at 24 CFR 570.453. Except as specifically provided below, applicants, rather than the Secretary of HUD, must comply with these regulations.

(c) "Project" means a commercial, industrial, and/or neighborhood project supported by the UDAG program of the Department of HUD, as defined in 24 CFR 570.451(g). A project includes the group of integrally related public and private activities described in the grant application which are to be carried out to meet the objectives of the action grant program and consists of all action grant funded activities together with all non-action grant funded activities. A project is an "undertaking" as defined in 36 CFR 800.2(c).

(d) "State Historic Preservation Officer Review Period" is a 45 day period provided to the appropriate State Historic Preservation Officer by section 110(c) of the Housing and Community Development Act (HCDA) of 1980 for comment on the formal submission by the applicant of data on properties listed in the National Register or which may meet the Criteria and which will be affected by the proposed UDAG project. This period does not include any period during which the applicant seeks information from the State Historic Preservation Officer to assist the applicant in identifying properties, determining whether a property meets the Criteria for listing in the National Register of Historic Places and determining whether such property is affected by the project.

(e) "Secretary of the Interior Determination Period" is a 45 day period provided by section 110(c) of the

HCDA of 1980 for a determination as to whether the identified properties are eligible for inclusion in the National Register.

§ 801.3 Applicant responsibilities.

As early as possible before the applicant makes a final decision concerning a project and in any event prior to taking any action that would foreclose alternatives or the Council's ability to comment, the applicant should take the following steps to comply with the requirements of section 106 of the National Historic Preservation Act and section 110 of the HCDA of 1980.

In order to facilitate the commenting process the applicant should forward to the Council information on the proposed project at the earliest practicable time if it appears that National Register properties or properties which meet the Criteria for inclusion will be affected. This will allow the Council to assist the applicant in expeditiously meeting its historic preservation requirements and facilitate the development of the Council's comments.

(a) *Information required.* It is the primary responsibility of the applicant requesting Council comments to conduct the appropriate studies and to provide the information necessary for a review of the effect a proposed project may have on a National Register property or a property which meets the Criteria, as well as the information necessary for adequate consideration of modifications or alterations to the proposed project that could avoid, mitigate, or minimize any adverse effects. It is the responsibility of the applicant to provide the information specified in § 801.7, to make an informed and reasonable evaluation of whether a property meets the National Register Criteria (36 CFR 60.6) and to determine the effect of a proposed undertaking on a National Register property or property which meets the Criteria.

(b) *Identification of properties.* Section 110 of the HCDA of 1980 makes UDAG applicants responsible for the identification of National Register properties and properties which may meet the Criteria for listing in the National Register that may be affected by the project. An appendix to these regulations sets forth guidance to applicants in meeting their identification responsibilities but does not set a fixed or inflexible standard for such efforts. Meeting this responsibility requires the applicant to make an earnest effort to identify and evaluate potentially affected historic properties by:

(1) Consulting the National Register of Historic Places to determine whether the project's impact area includes such properties;

(2) Obtaining, prior to initiating the State Historic Preservation Officer Review Period, relevant information that the State Historic Preservation Officer may have available concerning historic properties, if any are known, in the project's impact area;

(3) Utilizing local plans, surveys, and inventories of historic properties prepared by the locality or a recognized State or local historic authority;

(4) Utilizing other sources of information or advice the applicant deems appropriate;

(5) Conducting an on-the-ground inspection of the project's impact area by qualified personnel to identify properties which may meet the Criteria for evaluation taking into consideration the views of the State Historic Preservation Officer as to the need for and methodology of such inspections;

(6) Applying the Department of the Interior Criteria for Evaluation (36 CFR 60.6) to properties within the project's impact area.

(c) *Evaluation of effect.* Applicants are required by section 110(a) of the HCDA of 1980 to include in their applications a description of the effect of a proposed UDAG project on any National Register property and or any property which may meet the Criteria.

(1) *Criteria of Effect and Adverse Effect.* The following criteria, similar to those set forth in 36 CFR 800.3, shall be used to determine whether a project has an effect or an adverse effect.

(i) *Criteria of effect.* The effect of a project on a National Register or eligible property is evaluated in the context of the historical, architectural, archeological, or cultural significance possessed by the property. A project shall be considered to have an effect whenever any condition of the project causes or may cause any change, beneficial or adverse, in the quality of the historical, architectural, archeological, or cultural characteristics that qualify the property to meet the Criteria of the National Register. An effect occurs when a project changes the integrity of location, design, setting, materials, workmanship, feeling or association of the property that contributes to its significance in accordance with the National Register Criteria. An effect may be direct or indirect. Direct effects are caused by the project and occur at the same time and place. Indirect effects include those caused by the undertaking that are later in time or farther removed in distance, but are still reasonably foreseeable. Such effects involve development of the project site around historic properties so as to affect the access to, use of, or significance of those properties.

(ii) *Criteria of adverse effect.* Adverse effects on National Register properties or properties which meet the Criteria may occur under conditions which include but are not limited to:

(A) Destruction or alteration of all or part of a property;

(B) Isolation from or alteration of the property's surrounding environment;

(C) Introduction of visual, audible, or atmospheric elements that are out of character with the property or alter its setting;

(D) Neglect of a property resulting in its deterioration or destruction;

(iii) *Special considerations.* If rehabilitation is a project activity, such components of the project may be considered to have no adverse effect and need not be referred to the Council if they are undertaken in accordance with the Secretary of the Interior's Standards for Historic Preservation Projects (U.S. Department of the Interior, Heritage Conservation and Recreation Service, Washington, D.C., 1979) and the State Historic Preservation Officer concurs in the proposed activity. Additionally, the following types of project components or elements will be considered to not normally adversely affect properties listed in the National Register or which meet the Criteria.

(A) Insulation (except for the use of granular or liquid injected foam insulation in exterior walls or other vertical surfaces);

(B) Caulking;

(C) Weatherstripping;

(D) Replacement of Heating, Ventilating and Air Conditioning (HVAC) equipment, provided that such equipment is not historic and that replacement equipment is screened from public view and that the State Historic Preservation Officer and the applicant agree the equipment will not affect those qualities of the property which qualify it to meet the 36 CFR 60.6 Criteria;

(E) In-kind refenestration (for example, replacement of deteriorated windows of a similar configuration, color and material);

(F) Lowering of ceilings, provided the ceilings will not be visible from outside of the building or from an interior public space and that the State Historic Preservation Officer and the applicant agree it will not affect a quality which qualified the building to meet the 36 CFR 60.6 Criteria;

(G) Replacement in-kind of substantially deteriorated material, provided that the State Historic Preservation Officer and the applicant agree;

(H) Installation of machinery, equipment, furnishings, fixtures, etc., in the interior of existing buildings, provided that the State Historic Preservation Officer and the applicant agree such installations will not affect a quality which qualified the building to meet the 36 CFR 60.6 Criteria.

(I) Site improvements such as sidewalk paving and landscaping, provided that the State Historic Preservation Officer and the applicant agree that the site improvement will not affect those qualities of the property which qualify it to meet the 36 CFR 30.6 Criteria.

(iv) *Special considerations for archeological sites.* Under certain conditions, alteration of land containing archeological resources in the project area may have no adverse effect on those resources. Procedures for determining whether such conditions exist were published by the Council in the

FEDERAL REGISTER on November 26, 1980 (45 FR 78808), as Part X of the "Executive Director's Procedures for Review of Proposals for Treatment of Archeological Properties." Because the identification of archeological sites in an urban context, and consideration of appropriate treatment methods, present special problems, further guidance is provided in Appendix 2.

(2) *Determinations of Effect.* Prior to submitting an application to HUD, the applicant shall apply the Criteria of Effect and Adverse Effect to all properties which are listed in the National Register or which may meet the Criteria in the area of the project's potential environmental impact. The determination of the Secretary of the Interior shall be final with respect to properties which are eligible for listing in the National Register. The Council will not comment on affected properties which are not either listed in or eligible for listing in the National Register. In order to facilitate the process, information to be requested from the State Historic Preservation Officer under § 801.3(b)(2) should include advice on applying the Criteria of Effect and Adverse Effect provided that this period shall not be included in the 45 day State Historic Preservation Officer Review Period. Special attention should be paid to indirect effects, such as changes in land use, traffic patterns, street activity, population density and growth rate. While some aspects of a project may have little potential to adversely affect the significant qualities of a historic property, other project components may meet the Criteria of Effect and Adverse Effect. If any aspect of the project results in an effect determination, further evaluation of the effect shall be undertaken in accordance with these regulations. The resulting determination regarding the effect shall be included in the application.

(i) *No effect.* If the applicant determines that the project will have no effect on any National Register property and/or property which meets the Criteria, the project requires no further review by the Council unless a timely objection is made by the Executive Director. An objection may be made by the Executive Director at any time during the UDAG application process prior to the expiration of the period for receiving objections to HUD's release of funds as specified in 24 CFR 58.31. The manner in which the Executive Director shall make an objection is set forth in § 801.4(a).

(ii) *Determinations of no adverse effect.* If the applicant finds there is an effect on the property but it is not adverse, the applicant after receiving the comments of the State Historic Preservation Officer during the State Historic Preservation Officer Review Period shall forward adequate documentation (see § 801.7(a)) of the Determination, including the written comments of the State Historic Preservation Officer, if available, to the Executive Director for review in accordance with § 801.4.

(iii) *Adverse effect determination.* If the applicant finds the effect to be adverse or if the Executive Director objects to an applicant's no adverse effect determination pursuant to § 801.4(a), the applicant shall proceed with the consultation process in accordance with § 801.4(b).

§ 801.4 Council comments.

The following subsections specify how the Council will respond to an applicant's request for the Council's comments required to satisfy the applicant's responsibilities under section 106 of the Act and section 110 of the HCDA of 1980. When appropriate, an applicant may waive the Council time periods specified in these regulations.

(a) *Executive Director's Objection to No Effect Determination.* If the Executive Director has reason to question an applicant's determination of no effect, he shall notify the applicant and HUD. If the Executive Director does not object within 15 days of such notification, the project may proceed. If the Executive Director objects, he shall specify whether or not the project will have an adverse effect on National Register property and/or property which meets the Criteria. Normally, the Executive Director will object to a determination of no effect when the record does not support the applicant's determination (see

§ 801.7(a). The applicant must then comply with the provisions of subsection (b) if the Executive Director determines that the project will have no adverse effect or subsection (c) if the Executive Director has determined that the project will have an adverse effect.

(b) *Response to Determinations of No Adverse Effect.* (1) Upon receipt of a Determination of No Adverse Effect from an applicant, the Executive Director will review the Determination and supporting documentation required by § 801.7(a). Failure to provide the required information at the time the applicant requests Council comments will delay the process. The Executive Director will respond to the applicant within 15 days after receipt of the information required in § 801.7(a). Unless the Executive Director objects to the Determination within 15 days after receipt, the applicant will be considered to have satisfied its responsibilities under section 106 of the Act and these regulations and no further Council review is required.

(2) If the Executive Director objects to a Determination of No Adverse Effect, the consultation process pursuant to § 801.4(c) shall be initiated.

(c) *Consultation process.* If any aspect of the project is found to have adverse effects on National Register property or property which has been determined by the applicant or the Secretary of the Interior to meet the Criteria, the applicant, the State Historic Preservation Officer and the Executive Director shall consult to consider feasible and prudent alternatives to the project that could avoid, mitigate, or minimize the adverse effect on the affected property.

(1) *Parties.* The applicant, the State Historic Preservation Officer and the Executive Director shall be the consulting parties. The Department of HUD, other representatives of national, State, or local units of government, other parties in interest, and public and private organizations, may be invited by the consulting parties to participate in the consultation process.

(2) *Timing.* The consulting parties shall have a total of 45 days from the receipt by the Executive Director of the information required in § 801.7(a) to agree upon feasible and prudent alternatives to avoid, mitigate, or minimize any adverse effects of the project. Failure of an applicant to provide the information required in § 801.7(b) will delay the beginning of the time period specified above.

(3) *Information requirements.* The applicant shall provide copies of the information required in § 801.7(b) to the consulting parties at the initiation of the consultation process and make it readily available for public inspection.

(4) *Public meeting.* An onsite inspection and a Public Information Meeting may be held in accordance with the provisions of 36 CFR 800.6(b). Public hearings or meetings conducted by the applicant in the preparation of the application may, as specified below, substitute for such Public Information Meetings. Upon request of the applicant, the Executive Director may find that such public meetings have been adequate to consider the effect of the project on National Register properties or properties which meet the Criteria, and no further Public Information Meeting is required.

(5) *Consideration of alternatives.* During the consultation period, the consulting parties shall, in accordance with the policies set forth in 36 CFR 800.6(b) (4) and (5), review the proposed project to determine whether there are prudent and feasible alternatives to avoid or satisfactorily mitigate adverse effect. If they agree on such alternatives, they shall execute a Memorandum of Agreement in accordance with § 801.4(c) specifying how the undertaking will proceed to avoid or mitigate the adverse effect.

(6) *Acceptance of adverse effect.* If the consulting parties determine that there are no feasible and prudent alternatives that could avoid or satisfactorily mitigate the adverse effects and agree that it is in the public interest to proceed with the proposed project they shall execute a Memorandum of Agreement in accordance with § 801.4(c) acknowledging this determination and specifying any recording, salvage, or other measures associated with acceptance of the adverse effects

that shall be taken before the project proceeds.

(7) *Failure to agree.* Upon the failure of the consulting parties to agree upon the terms for a Memorandum of Agreement within the specified time period, or upon notice of a failure to agree by any consulting party to the Executive Director, the Executive Director within 15 days shall recommend to the Chairman whether the matter should be scheduled for consideration at a Council meeting. If the Executive Director recommends that the Council not consider the matter, he shall simultaneously notify all Council members and provide them copies of the preliminary case report and the recommendation to the Chairman. The applicant and the State Historic Preservation Officer shall be notified in writing of the Executive Director's recommendation.

(d) *Memorandum of Agreement*—(1) *Preparation of Memorandum of Agreement.* It shall be the responsibility of the Executive Director to prepare each Memorandum of Agreement required under this part. As appropriate, other parties may be invited by the consulting parties to be signatories to the Agreement or otherwise indicate their concurrence with the Agreement. In order to facilitate the process, the applicant may provide the Executive Director a draft for a Memorandum of Agreement. At the applicant's option, such draft may be prepared at the time the applicant makes its determinations that properties listed in the National Register or which may meet the Criteria for listing in the National Register may be adversely affected. The applicant must provide the State Historic Preservation Officer an opportunity to concur in or comment on its draft Agreement.

(2) *Review of Memorandum of Agreement.* Upon receipt of an executed Memorandum of Agreement, the Chairman shall institute a 15 day review period. Unless the Chairman notifies the applicant that the matter has been placed on the agenda for consideration at a Council meeting, the Agreement shall become final when ratified by the Chairman or upon the expiration of the 15 day review period with no action taken. Copies will be provided to signatories. A copy of the Memorandum of Agreement should be included in any Environmental Assessment or Environmental Impact Statement prepared pursuant to the National Environmental Policy Act.

(3) *Effect of Memorandum of Agreement.* (i) Agreements duly executed in accordance with these regulations shall constitute the comments of the Council and shall evidence satisfaction of the applicant's responsibilities for the proposed project under section 106 of the Act and these regulations.

(ii) If the Council has commented on an application that is not approved by HUD and a subsequent UDAG application is made for the same project, the project need not be referred to the Council again unless there is a significant amendment to the project which would alter the effect of the project on previously considered properties or result in effects on additional National Register properties or properties which meet the Criteria.

(iii) Failure to carry out the terms of a Memorandum of Agreement requires that the applicant again request the Council's comments in accordance with these regulations. In such instances, until the Council issues its comments under these regulations the applicant shall not take or sanction any action or make any irreversible or irretrievable commitment that could result in an adverse effect with respect to National Register properties or properties which are eligible for inclusion in the National Register covered by the Agreement or that would foreclose the Council's consideration of modifications or alternatives to the proposed project that could avoid or mitigate the adverse effect.

(4) *Amendment of a Memorandum of Agreement.* Amendments to the Agreement may be made as specified in 36 CFR 800.6(c)(4).

(5) *Report on Memorandum of Agreement.* Within 90 days after carrying out the terms of the Agreement, the applicant shall report to all signatories on the actions taken.

(e) *Council Meetings.* Council meetings to consider a project will be conducted in accordance with the policies set forth in 36 CFR 800.6(d).

(1) *Response to recommendation concerning consideration at Council meeting.* Upon receipt of a recommendation from the Executive Director concerning consideration of a proposed project at a Council meeting, the Chairman shall determine whether or not the project will be considered. The Chairman shall make a decision within 15 days of receipt of the recommendation of the Executive Director. In reaching a decision the Chairman shall consider any comments from Council members. If three members of the Council object within the 15 day period to the Executive Director's recommendation, the project shall be scheduled for consideration at a Council or panel meeting. Unless the matter is scheduled for consideration by the Council the Chairman shall notify the applicant, the Department of HUD, the State Historic Preservation Officer and other parties known to be interested of the decision not to consider the matter. Such notice shall be evidence of satisfaction of the applicant's responsibilities for the proposed project under section 106 of the Act and these regulations.

(2) *Decision to consider the project.* When the Council will consider a proposed project at a meeting, the Chairman shall either designate five members as a panel to hear the matter on behalf of the full Council or schedule the matter for consideration by the full Council. In either case, the meeting shall take place within 30 days of the Chairman's decision to consider the project, unless the applicant agrees to a longer time.

(i) A panel shall consist of three non-Federal members, one as Chairman, and two Federal members. The Department of HUD may not be a member of such panel.

(ii) Prior to any panel or full Council consideration of a matter, the Chairman will notify the applicant and the State Historic Preservation Officer and other interested parties of the date on which the project will be considered. The Executive Director, the applicant, the Department of HUD, and the State Historic Preservation Officer shall prepare reports in accordance with § 801.7(b). Reports from the applicant and the State Historic Preservation Officer must be received by the Executive Director at least 7 days before any meeting.

(3) *Notice of Council meetings.* At least 7 days notice of all meetings held pursuant to this section shall be given by publication in the FEDERAL REGISTER. The Council shall provide a copy of the notice by mail to the applicant, the State Historic Preservation Officer, and the Department of Housing and Urban Development. The Council will inform the public of the meeting through appropriate local media.

(4) *Statements to the Council.* An agenda shall provide for oral statements from the Executive Director; the applicant; the Department of HUD; parties in interest; the Secretary of the Interior; the State Historic Preservation Officer; representatives of national, State, or local units of government; and interested public and private organizations and individuals. Parties wishing to make oral remarks should notify the Executive Director at least two days in advance of the meeting. Parties wishing to have their written statements distributed to Council members prior to the meeting should send copies of the statements to the Executive Director at least 5 days in advance.

(5) *Comments of the Council.* The written comments of the Council will be issued within 7 days after a meeting. Comments by a panel shall be considered the comments of the full Council. Comments shall be made to the applicant requesting comment and to the Department of HUD. Immediately after the comments are made to the applicant and the Department of HUD, the comments of the Council will be forwarded to the President and the Congress as a special report under authority of section 202(b) of the Act and a notice of availability will be published in the FEDERAL REGISTER. The comments of the Council shall be made available to the State Historic Preservation Officer, other parties in interest, and the public upon receipt of the comments by the applicant. The applicant should include the comments of the Council in any final Environmental Impact Statement prepared pursuant to the National Environmental Policy Act.

(6) *Action in response to Council comments.* The comments of the Council shall be taken into account in reaching a final decision on the proposed project. When a final decision regarding the proposed project is reached by the applicant and the Department of HUD, they shall submit written reports to the Council describing the actions taken by them and other parties in response to the Council's comments and the impact that such actions will have on the affected National Register properties or properties eligible for inclusion in the National Register. Receipt of this report by the Chairman shall be evidence that the applicant has satisfied its responsibilities for the proposed project under section 106 of the Act and these regulations. The Council may issue a final report to the President and the Congress under authority of section 202(b) of the Act describing the actions taken in response to the Council's comments including recommendations for changes in Federal policy and programs, as appropriate.

(f) *Suspense of Action.* Until the Council issues its comments under these regulations and during the State Historic Preservation Officer Review Period and the determination period of the Secretary of the Interior, good faith consultation shall preclude the applicant from taking or sanctioning any action or making any irreversible or irretrievable commitment that could result in an adverse effect on a National Register property or property which may meet the Criteria or that would foreclose the consideration of modifications or alternatives to the proposed project that could avoid, mitigate, or minimize such adverse effects. In no case shall UDAG funds be used for physical activities on the project site until the Council comments have been completed. Normal planning and processing of applications short of actual commitment of funds to the project may proceed.

(g) *Lead Agency.* If the project proposed by the applicant involves one or more Federal agencies, they may agree on a single lead agency to meet the requirements of section 106 of the National Historic Preservation Act and section 110 of the Housing and Community Development Act of 1980 and notify the Executive Director. If the applicant is the designated lead agency, these regulations shall be followed. If a Federal agency is designated lead agency, the process in 36 CFR Part 800 shall be used.

(h) *Compliance by a Federal Agency.* An applicant may make a finding that it proposes to accept a Federal agency's compliance with section 106 of the Act and 36 CFR 800 where its review of the Federal agency's findings indicate that:

(1) The project is identical with an undertaking reviewed by the Council under 36 CFR Part 800; and

(2) The project and its impacts are included within the area of potential environmental impact described by the Federal agency;

The applicant shall notify the State Historic Preservation Officer and the Executive Director of its finding of compliance with section 106 of the Act and 36 CFR Part 800 and provide a copy of the Federal agency's document where the finding occurs. Unless the Executive Director objects within 10 days of receipt of such notice the Council need not be afforded further opportunity for comment. If the Executive Director objects to the finding of the applicant, the applicant shall comply with § 801.4.

§ 801.5 State Historic Preservation Officer responsibilities.

(a) The State Historic Preservation Officer shall have standing to participate in the review process established by section 110(c) of the HCDA of 1980 whenever it concerns a project located within the State Historic Preservation Officer's jurisdiction by the following means: providing, within 30 days, information requested by an applicant under § 801.3(b); responding, within 45 days, to submittal of a determination by the applicant under section 110 of the HCDA of 1980 that National Register property or property which meets the Criteria may be affected by the proposed project; participating in a Memorandum of Agreement that the applicant or the Executive Director may prepare under this part; and participating in a panel or full Council meeting that may be held pursuant to these regulations. Pursuant to section 110(c) of the HCDA of 1980, the State Historic Preservation Officer has a maximum period of 45 days in which to formally comment on an applicant's determination that the project may affect a property that is listed in the National Register or which may meet the Criteria for listing in the National Register. This period does not include the time during which the applicant seeks information from the State Historic Preservation Officer for determining whether a property meets the Criteria for listing in the National Register and whether such property is affected by the project.

(b) The failure of a State Historic Preservation Officer to participate in any required steps of the process set forth in this part shall not prohibit the Executive Director and the applicant from concluding the section 106 process, including the execution of a Memorandum of Agreement.

§ 801.6 Coordination with requirements under the National Environmental Policy Act (42 U.S.C. 4321 et seq.).

The National Historic Preservation Act and the National Environmental Policy Act create separate and distinct responsibilities. The National Historic Preservation Act applies to those aspects of a project which may affect National Register properties and those which are eligible for listing in the National Register. The requirements for the National Environmental Policy Act apply to the effect that the project will have on the human environment. To the extent that the applicant finds it practicable to do so, the requirements of these two statutes should be integrated. Some projects, for reasons other than the effects on historic properties, may require an Environmental Impact Statement (EIS) subject to the time requirements for a draft and final EIS, in which case the applicant may choose to separately relate to the State Historic Preservation Officer, the Department of the Interior, and the Council for purposes of section 110(c) of the HCDA of 1980. In that event, information in the draft EIS should indicate that compliance with section 106 and these regulations is underway and the final EIS should reflect the results of this process. Applicants are directed to 36 CFR 800.9, which describes in detail the manner in which the requirements of these two acts should be integrated and applies to all UDAG applicants under these regulations.

In those instances in which an Environmental Impact Statement will be prepared for the project, the applicant should consider phasing compliance with these procedures and the preparation of the Statement.

§ 801.7 Information requirements.

(a) *Information To Be Retained by Applicants Determining No Effect.* (1) Recommended Documentation for a Determination of No Effect. Adequate documentation of a Determination of No Effect pursuant to § 801.3(c)(2)(i) should include the following:

(i) A general discussion and chronology of the proposed project;

(ii) A description of the proposed project including, as appropriate, photographs, maps, drawings, and specifications;

(iii) A statement that no National Register property or property which meets the Criteria exist in the project area, or a brief statement explaining why the Criteria of Effect (See § 801.3(c)) was found inapplicable;

(iv) Evidence of consultation with the State Historic Preservation Officer concerning the Determination of No Effect; and

(v) Evidence of efforts to inform the public concerning the Determination of No Effect.

(2) The information requirements set forth in this section are meant to serve as guidance for applicants in preparing No Effect Determinations. The information should be retained by the applicant, incorporated into any environmental reports or documents prepared concerning the project, and provided to the Executive Director only in the event of an objection to the applicant's determination.

(b) *Reports to the Council.* In order to adequately assess the impact of a proposed project on National Register and eligible properties, it is necessary for the Council to be provided certain information. For the purposes of developing Council comments on UDAG projects the following information is required. Generally, to the extent that relevant portions of a UDAG application meet the requirements set forth below it will be sufficient for the purposes of Council review and comment.

(1) *Documentation for Determination of No Adverse Effect.* Adequate documentation of a Determination of No Adverse Effect pursuant to § 801.3(c)(1) should include the following:

(i) A general discussion and chronology of the proposed project;

(ii) A description of the proposed project including, as appropriate, photographs, maps, drawings and specifications;

(iii) A copy of the National Register form or a copy of the Determination of Eligibility documentation for each property that will be affected by the project including a description of each property's physical appearance and significance;

(iv) A brief statement explaining why each of the Criteria of Adverse Effect (See § 801.3(c)(1)) was found inapplicable;

(v) Written views of the State Historic Preservation Officer concerning the Determination of No Adverse Effect, if available; and,

(vi) An estimate of the cost of the project including the amount of the UDAG grant and a description of any other Federal involvement.

(2) *Preliminary Case Reports.* Preliminary Case Reports should be submitted with a request for comments pursuant to § 801.4(b) and should include the following information:

(i) A general discussion and chronology of the proposed project;

(ii) The status of the project in the HUD approval process;

(iii) The status of the project in the National Environmental Policy Act compliance process and the target date for completion of all the applicant's environmental responsibilities;

(iv) A description of the proposed project including as appropriate, photographs, maps, drawings and specifications;

(v) A copy of the National Register form or a copy of the Determination of Eligibility documentation for each property that will be affected by the project including a description of each property's physical appearance and significance;

(vi) A brief statement explaining why any of the Criteria of Adverse Effect (See § 801.3(c)(1)(b)) apply;

(vii) Written views of the State Historic Preservation Officer concerning the effect on the property, if available;

(viii) The views of Federal agencies, State and local governments, and other groups or individuals when known as obtained through the OMB Circular A-95 process or the environmental review process, public hearings or other applicant processes;

(ix) A description and analysis of alternatives that would avoid the adverse effects;

(x) A description and analysis of alternatives that would mitigate the adverse effects; and,

(xi) An estimate of the cost of the project including the amount of the UDAG grant and a description of any other Federal involvement.

(c) *Reports for Council Meetings.* Consideration of a proposed project by the full Council or a panel pursuant to § 801.4(b) is based upon reports from the Executive Director, the State Historic Preservation Officer and Secretary of the Interior. Requirements for these reports are specified in 36 CFR 800.13(c). Additionally, reports from the applicant and the Department of HUD are required by these regulations. The requirements for these reports consist of the following:

(1) *Report of the Applicant.* The report from the applicant requesting comments shall include a copy of the relevant portions of the UDAG application; a general discussion and chronology of the proposed project; an account of the steps taken to comply with the National Environmental Policy Act (NEPA); any relevant supporting documentation in studies that the applicant has completed; an evaluation of the effect of the project upon the property or properties, with particular reference to the impact on the historical, architectural, archeological, and cultural values; steps taken or proposed by the applicant to avoid or mitigate adverse effects of the

project; a thorough discussion of alternate courses of action; and an analysis comparing the advantages resulting from the project with the disadvantages resulting from the adverse effects on National Register or eligible properties.

(2) *Report of the Secretary of Housing and Urban Development.* The report from the Secretary shall include the status of the application in the UDAG approval process, past involvement of the Department with the applicant and the proposed project or land area for the proposed project, and information on how the applicant has met other requirements of the Department for the proposed project.

§ 801.8 **Public participation.**

(a) The Council encourages maximum public participation in the process established by these regulations. Particularly important, with respect to the UDAG program, is participation by the citizens of neighborhoods directly or indirectly affected by projects, and by groups concerned with historic and cultural preservation.

(b) The applicant, in preparing and following its citizen participation plan called for by 24 CFR 570.456(c)(11)(i)(A), should ensure that adequate provision is made for participation by citizens and organizations having interests in historic preservation and in the historic and cultural values represented in affected neighborhoods. 24 CFR 570.431(c) sets forth criteria for citizen participation plans. These should be carefully considered with specific reference to ensuring that local concerns relevant to historic preservation are fully identified, and that citizens are provided with full and accurate information about each project and its effects on historic properties. The applicant should ensure that potentially concerned citizens and organizations are fully involved in the identification of properties which may meet the National Register Criteria, and that they are fully informed, in a timely manner, of determinations of No Effect, No Adverse Effect, and Adverse Effect, and of the progress of the consultation process. Applicants are referred to 36 CFR 800.15 for Council guidelines for public participation.

(c) The Council welcomes the views of the public, especially those groups which may be affected by the proposed project, during its evaluation of the applicant's determination of effect, and will solicit the participation of the public in Council and panel meetings held to consider projects.

APPENDIX 1—IDENTIFICATION OF PROPERTIES: GENERAL

A. Introduction

Because of the high probability of locating properties which are listed in the National Register or which meet the Criteria for listing in many older city downtowns, this appendix is designed to serve as guidance for UDAG applicants in identifying such properties. This appendix sets forth guidance for applicants and does not set a fixed or inflexible standard for identification efforts.

B. Role of the State Historic Preservation Officer

In any effort to locate National Register properties or properties which meet the Criteria, the State Historic Preservation Officer is a key source of information and advice. The State Historic Preservation Officer will be of vital assistance to the applicant. The State Historic Preservation Officer can provide information on known properties and on studies which have taken place in and around the project area. Early contact should be made with the State Historic Preservation Officer for recommendations about how to identify historic properties. For UDAG projects, identification of National Register properties and properties which meet the Criteria is the responsibility of the applicant. The extent of the identification effort should be made with the advice of the State Historic Preservation Officer. The State Historic Preservation Officer can be a knowledgeable source of information regarding cases wherein the need for a survey of historic properties is appropriate, recommended type and method of a survey and the boundaries of any such survey. Due consideration should be given to the nature of the project and its impacts, the likelihood of historic properties being affected and the state of existing knowledge regarding historic properties in the area of the project's potential environmental impact.

C. Levels of Identification

1. The area of the project's potential environmental impact consists of two distinct subareas: that which will be disturbed directly (generally the construction site and its immediate environs) and that which will experience indirect effects. Within the area of indirect impact, impacts will be induced as a result of carrying the project out. Historic and cultural properties subject to effect must be identified in both subareas, and the level of effort necessary in each may vary. The level of effort needed is also affected by the stage of planning and the quality of pre-existing information. Obviously, if the area of potential environmental impact has already been fully and intensively studied before project planning begins, there is no need to duplicate this effort. The State Historic Preservation Officer should be contacted for information on previous studies. If the area has not been previously intensively studied, identification efforts generally fall into three levels:

a. *Overview Study:* This level of study is normally conducted as a part of general planning and is useful at an early stage in project formulation. It is designed to obtain a general understanding of an area's historic and cultural properties in consultation with the State Historic Preservation Officer, by:

(1) assessing the extent to which the area has been previously subjected to study;

(2) locating properties previously recorded,

(3) assessing the probability that properties eligible for the National Register will be found if the area is closely inspected, and

(4) determining the need, if any, for further investigation.

An overview study includes study of pertinent records (local histories, building inventories, architectural reports, archeological survey reports, etc.), and usually some minor on-the-ground inspection.

b. *Identification Study:* An identification study attempts to specifically identify and record all properties in an area that may meet the criteria for listing in the National Register. In conducting the study, the applicant should seek the advice of the State Historic Preservation Officer regarding pertinent background data. A thorough on-the-ground inspection of the subject area by qualified personnel should be undertaken. For very large areas, or areas with uncertain boundaries, such a study may focus on representative sample areas, from which generalizations may be made about the whole.

c. *Definition and Evaluation Study:* If an overview and/or an identification study have indicated the presence or probable presence of properties that may meet the National Register Criteria but has not documented them sufficiently to allow a determination to be made about their eligibility, a definition and evaluation study is necessary. Such a study is directed at specific potentially eligible properties or at areas known or suspected to contain such properties. It includes an intensive on-the-ground inspection and related studies as necessary, conducted by qualified personnel, and provides sufficient information to apply the National Register's "Criteria for Evaluation" (36 CFR Part 60.6).

2. An overview study will normally be needed to provide basic information for planning in the area of potential environmental impact. Unless this study indicates clearly that no further identification efforts are needed (e.g., by demonstrating that the entire area has already been intensively inspected with negative results, or by demonstrating that no potentially significant buildings have ever been built there and there is virtually no potential for archeological resources), and identification study will probably be needed within the area of potential environmental impact. This study may show that there are no potentially eligible properties within the area, or may show that only a few such properties exist and document them sufficiently to permit a determination of eligibility to be made in accordance with 36 CFR Part 60. Alternatively, the study may indicate that potentially eligible properties exist in the area, but may not document them to the standards of 36 CFR Part 60. Should this occur, a definition and evaluation study is necessary for those properties falling within the project's area of direct effect and for those properties subject to indirect effects. If a property falls within the general area of indirect effect, but no indirect effects are actually anticipated on the property in question, a definition and evaluation study will normally be superfluous.

APPENDIX 2—SPECIAL PROCEDURES FOR IDENTIFICATION AND CONSIDERATION OF ARCHEOLOGICAL PROPERTIES IN AN URBAN CONTEXT

A. Archeological sites in urban contexts are often difficult to identify and evaluate in advance of construction because they are sealed beneath modern buildings and structures. Prehistoric and historic sites within cities may be important both to science and to an understanding of each city's history, however, and should be considered in project planning. Special methods can be used to ensure effective and efficient consideration and treatment of archeological sites in UDAG projects.

1. If it is not practical to physically determine the existence or nonexistence of archeological sites in the project area, the

probability or improbability of their existence can be determined, in most cases, through study of:

a. Information on the pre-urban natural environment, which would have had an effect on the location of prehistoric sites;

b. Information from surrounding areas and general literature concerning the location of prehistoric sites;

c. State and local historic property registers or inventories;

d. Archeological survey reports;

e. Historic maps, atlases, tax records, photographs, and other sources of information on the locations of earlier structures;

f. Information on discoveries of prehistoric or historic material during previous construction, land levelling, or excavation, and

g. Some minor on-the-ground inspection.

2. Should the study of sources such as those listed in section (1)(a) above reveal that the following conditions exist, it should be concluded that a significant likelihood exists that archeological sites which meet the National Register Criteria exist on the project site:

a. Discoveries of prehistoric or historic material remains have been reliably reported on or immediately adjacent to the project site, and these are determined by the State Historic Preservation Officer or other archeological authority to meet the Criteria for the National Register because of their potential value for public interpretation or the study of significant scientific or historical research problems; or

b. Historical or ethnographic data, or discoveries of material, indicate that a property of potential cultural value to the community or some segment of the community (e.g., a cemetery) lies or lay within the project site; or

c. The pre-urbanization environment of the project site would have been conducive to prehistoric occupation, or historic buildings or occupation sites are documented to have existed within the project site in earlier times, and such sites or buildings are determined by the State Historic Preservation Officer or other archeological authority to meet the Criteria of the National Register because of their potential value for public interpretation or the study of significant scientific or historical research questions, and

d. The recent history of the project site has not included extensive and intensive ground disturbance (grading, blasting, cellar digging, etc.) in the location, or extending to the depth at which the remains of significant sites, buildings, or other features would be expected.

B. Where review of sources of information such as those listed in section (1)(a) above reveals no significant likelihood that archeological resources which meet the National Register Criteria exist on the project site, no further review is required with respect to archeology provided the State Historic Preservation Officer concurs.

C. Where review of sources of information such as those listed in section (1)(a) above, reveals that archeological resources which meet the National Register Criteria are likely to exist on the project site, but these resources are so deeply buried that the project will not intrude upon them, or they are in a portion of the project site that will not be disturbed, a determination of "No Effect" is appropriate in accordance with § 801.3(c)(2)(i).

D. Where review of sources of information such as those listed in section (1)(a) above, reveals that archeological resources which meet the Criteria exist or are likely to exist on the project site, and that the project is likely to disturb them, a determination of "No Adverse Effect" may be made in accordance with § 801.3(c)(2)(ii) if:

1. The applicant and/or developer is committed to fund a professionally supervised and planned pre-construction testing program, and to modification of the project in consultation with the State Historic Preservation Officer to protect or incorporate within the project the archeological resources discovered with a minimum of damage to them, or if:

2. The applicant and/or developer is committed to fund a professionally supervised and planned archeological salvage program, coordinated with site clearing and construction, following the standards of the Secretary of the Interior issued pursuant to the Archeological and Historic Preservation Act (16 U.S.C. 469) and the applicant finds that this program negates the adverse effect, in accordance with the standards set forth in section X of the Council's "Supplementary Guidance for Review of Proposals for Treatment of Archeological Properties" (45 FR 78808).

E. When archeological sites included in the National Register or which meet the Criteria are found to exist on the project site or in the area of the project's environmental impact, and where the project is likely to disturb such resources, and where the adverse effect of such disturbance cannot be negated by archeological salvage, a determination of "Adverse Effect" is appropriate in accordance with § 801.3(a)(2)(iii).

PART 805—PROCEDURES FOR IMPLEMENTATION OF NATIONAL ENVIRONMENTAL POLICY ACT

Sec.
805.1 Background.
805.2 Purpose.
805.3 Applicability.
805.4 Ensuring environmental documents are actually considered in Council decisionmaking.
805.5 Typical classes of action.
805.6 Interagency cooperation.
805.7 Environmental information.

AUTHORITY: Pub. L. 89-665, 80 Stat. 915 (16 U.S.C. 470), as amended, 84 Stat. 204 (1970), 87 Stat. 139 (1973), 90 Stat. 1320 (1976), 92 Stat. 3467 (1978); E.O. 11593, 3 CFR 1971 Comp., p. 154; President's Memorandum on Environmental Quality and Water Resources Management, July 12, 1978.

SOURCE: 45 FR 4353, Jan. 22, 1980, unless otherwise noted.

§ 805.1 Background.

(a) The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) establishes national policies and goals for the protection of the environment. Section 102(2) of NEPA contains certain procedural requirements directed toward the attainment of such goals. In particular, all Federal agencies are required to give appropriate consideration to the environmental effects of their proposed actions in their decisionmaking and to prepare detailed environmental statements on recommendations or reports on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.

(b) Executive Order 11991 of May 24, 1977, directed the Council on Environmental Quality (CEQ) to issue regulations to implement the procedural provisions of NEPA. Accordingly, CEQ issued final NEPA regulations (40 CFR Parts 1500-1508) on November 29, 1978, which are binding on all Federal agencies as of July 30, 1979. These regulations provide that each Federal agency shall as necessary adopt implementing procedures to supplement the regulations. Section 1507.3(b) of the NEPA regulations identifies those sections of the regulations which must be addressed in agency procedures.

§ 805.2 Purpose.

The purpose of this part is to establish Council procedures that supplement the NEPA regulations and provide for the implementation of those provisions identified in § 1507.3(b) of the regulations (40 CFR 1507.3(b)).

§ 805.3 Applicability.

(a) These procedures apply to actions of the full Council and the Council staff acting on behalf of the full Council.

(b) The following actions are covered by these procedures:

(1) Recommendations for legislation.

(2) Regulations implementing section 106 of the National Historic Preservation Act (NHPA).

(3) Procedures implementing other authorities.

(4) Policy recommendations that do not require implementation by another Federal agency.

(c) In accordance with § 1508.4 of the NEPA regulations (40 CFR 1508.4), Council comments on Federal, federally assisted and federally licensed undertakings provided pursuant to section 106 of the NHPA and 36 CFR Part 800 are categorically excluded from these procedures. This exclusion is justified because Federal agencies seeking the Council's comments under section 106 have the responsibility for complying with NEPA on the action they propose. The Council's role is advisory and its comments are to be considered in the agency decisionmaking process. Coordination between the section 106 and the NEPA processes is set forth in 36 CFR 800.9.

§ 805.4 Ensuring environmental documents are actually considered in Council decisionmaking.

(a) Section 1505.1 of the NEPA regulations (40 CFR 1505.1) contains requirements to ensure adequate consideration of environmental documents in agency decisionmaking. To implement these requirements the Council shall:

(1) Consider all relevant environmental documents in evaluating proposals for action;

(2) Ensure that all relevant environmental documents, comments, and responses accompany the proposal through internal Council review processes;

(3) Consider only those alternatives encompassed by the range of alternatives discussed in the relevant environmental documents when evaluating proposals for the Council action; and,

(4) Where an environmental impact statement (EIS) has been prepared consider the specific alternative analyzed in the EIS when evaluating the proposal which is the subject of the EIS.

(b) For each of the Council's principal activities covered by NEPA, the following chart identifies the point at which the NEPA process begins, the point at which it ends, and the key officials required to consider environmental documents in their decisionmaking.

Activity	Start of NEPA process	Completion of NEPA process	Key officials required to consider environmental documents
Recommendations for legislation.	During staff formulation of proposal.	Prior to submission to Congress or OMB.	Executive Director and full Council as appropriate.
Regulations and procedures	Prior to publication of draft regulations in FEDERAL REGISTER.	Prior to publication of final regulations in FEDERAL REGISTER.	Executive Director and full Council as appropriate.
Policy recommendations	During staff formulation of proposal.	Prior to adoption by full Council or Executive Director.	Executive Director and full Council as appropriate.

§ 805.5 Typical classes of action.

(a) Section 1507.3(c)(2) (40 CFR 1507.3(c)(2)) in conjunction with § 1508.4 requires agencies to establish three typical classes of action for similar treatment under NEPA: actions normally requiring EIS; actions normally requiring assessments but not necessarily EISs; and actions normally not requiring assessments or EISs. Each of the covered categories of Council actions generally falls within the second category, normally requiring an assessment but not necessarily an EIS.

(b) The Council shall independently determine whether an EIS or an environmental assessment is required where:

(1) A proposal for Council action is not covered by one of the typical classes of action above; or

(2) For actions which are covered, the presence of extraordinary circumstances indicates that some other level of environmental review may be appropriate.

§ 805.6 Interagency cooperation.

The Council shall consult with appropriate Federal and non-Federal agencies and with interested private persons and organizations when it is considering actions involving such parties and requiring environmental assessments. Where other Federal agencies are involved in the proposed action, the Council shall cooperate in the required environmental assessment and the preparation of necessary environmental documents. Where appropriate as determined by the nature and extent of Council involvement in the proposed action, the Council shall assume the status of lead agency.

§ 805.7 Environmental information.

Interested persons may contact the Executive Director for information regarding the Council's compliance with NEPA.

PART 810—FREEDOM OF INFORMATION ACT REGULATIONS

Sec.
810.1 Purpose and scope.
810.2 Procedure for requesting information.
810.3 Action on requests.

Sec.
810.4 Appeals.
810.5 Fees.
810.6 Exemptions.

AUTHORITY: Pub. L. 89-665, 80 Stat. 915 (16 U.S.C. 470) as amended by Pub. L. 91-243, Pub. L. 93-54, Pub. L. 94-422, Pub. L. 94-458, Pub. L. 96-199, Pub. L. 96-244, Pub. L. 96-515.

SOURCE: 46 FR 45334, Sept. 11, 1981, unless otherwise noted.

§ 810.1 Purpose and scope.

This subpart contains the regulations of the Advisory Council on Historic Preservation implementing the Freedom of Information Act (5 U.S.C. 552). Procedures for obtaining the records covered by the Act are established in these regulations. Persons seeking information or records of the Council are encouraged to consult first with the staff of the Council before filing a formal request under the Act pursuant to these regulations. The informal exchange of information is encouraged wherever possible.

§ 810.2 Procedure for requesting information.

(a) Requests for information or records not available through informal channels shall be directed to the Administrative Officer, Advisory Council on Historic Preservation, 1522 K Street NW., Washington, D.C. 20005. All such requests should be clearly marked "FREEDOM OF INFORMATION REQUEST" in order to ensure timely processing. Requests that are not so marked will be honored, but will be deemed not to have been received by the Council, for purposes of computing the response time, until the date on which they are identified by a member of the Council staff as being a request pursuant to the Freedom of Information Act.

(b) Requests should describe the records sought in sufficient detail to allow Council staff to locate them with a reasonable amount of effort. Thus, where possible, specific information, including dates, geographic location of cases, and parties involved, should be supplied.

(c) A request for all records falling within a reasonably specific category shall be regarded as conforming to the statutory requirement that records be reasonably described if the records can be identified by any process that is not unreasonably burdensome or disruptive of Council operations.

(d) If a request is denied on the ground that it does not reasonably describe the records sought, the denial shall specify the reasons why the request was denied and shall extend to the requester an opportunity to confer with Council staff in order to reformulate the request in sufficient detail to allow the records to be produced.

§ 810.3 Action on requests.

(a) Once a requested record has been identified, the Administrative Officer shall notify the requester of a date and location where the records may be examined or of the fact that copies are available. The notification shall also advise the requester of any applicable fees under § 810.5.

(b) A reply denying a request shall be in writing, signed by the Administrative Officer and shall include:

(1) Reference to the specific exemption under the Act which authorizes the denial of the record, a brief explanation of how the exemption applies to the record requested, and a brief statement of why a discretionary release is not appropriate; and,

(2) A statement that the denial may be appealed under § 810.4 within 30 days by writing to the Executive Director, Advisory Council on Historic Preservation, 1522 K Street NW., Washington, D.C. 20005.

(c) The requirements of § 810.3 (b)(1) and (2) do not apply to requests denied on the ground that they are not described with reasonable specificity and consequently cannot be identified.

(d) Within 10 working days from receipt of a request, the Administrative Officer shall determine whether to grant or deny the request and shall promptly notify the requester of the decision. In certain unusual circumstances specified below, the time for determinations on requests may be extended up to a total of 10 additional working days. The requester shall be notified in writing of any extension and of the reason for it, as well as of the data on which a determination will be made. Unusual circumstances include:

(1) The need to search for and collect records from field offices or other establishments that are separate from the Washington office of the Council;

(2) The need to search for, collect, and examine a voluminous amount of material which is sought in a request; or,

(3) The need for consultation with another agency having substantial interest in the subject matter of the request.

If no determination has been made by the end of the 10-day period or the end of the last extension, the requester may deem his request denied and may exercise a right of appeal in accordance with § 810.4.

§ 810.4 Appeals.

(a) When a request has been denied, the requester may, within 30 days of receipt of the denial, appeal the denial to the Executive Director of the Council. Appeals to the Executive Director shall be in writing, shall be addressed to the Executive Director, Advisory Council on Historic Preservation, 1522 K Street NW., Washington, D.C. 20005, and shall be clearly marked "FREEDOM OF INFORMATION APPEAL." Requests that are not so marked will be honored, but will be deemed not to have been received by the Council, for purposes of computing the response time, until the date on which they are identified by a member of the Council staff as being an appeal pursuant to the Freedom of Information Act.

(b) The appeal will be acted on within 20 working days of receipt. A written decision shall be issued. Where the decision upholds an initial denial of information, the decision shall include a reference to the specific exemption in the Freedom of Information Act which authorizes withholding the information, a brief explanation of how the exemption applies to the record withheld, and a brief statement of why a discretionary release is not appropriate. The decision shall also inform the requester of the right to seek judicial review in the U.S. District Court where the requester resides or has his principal place of business, or in which the agency records are situated, or in the District of Columbia.

(c) If no decision has been issued within 20 working days, the requester is deemed to have exhausted his administrative remedies.

§ 810.5 Fees.

(a) Fees shall be charged according to the schedules contained in paragraph (b) of this section unless it is determined that the requested information will be of primary benefit to the general public rather than to the requester. In that case, fees may be waived. Fees shall not be charged where they would amount to less than $3.00.

(b) The following charges shall be assessed:

(1) Copies of documents—$0.10 per page.

(2) Clerical searches—$1.00 for each one quarter hour in excess of the first quarter hour spent by clerical personnel in searching for requested records.

(3) Professional searches—$2.00 for each one quarter hour in excess of the first quarter hour spent by professional or managerial personnel in determining which records are covered by a request or other tasks that cannot be performed by clerical personnel.

(c) Where it is anticipated that fees may amount to more than $25.00, the requester shall be advised of the anticipated amount of the fee and his consent obtained before the request is processed. The time limits for processing the request under § 810.3 shall not begin to run until the requester's written agreement to pay the fees has been received. In the discretion of the Administrative Officer, advance payment of fees may be required before requested records are made available.

(d) Payment should be made by check or money order payable to the Advisory Council on Historic Preservation.

§ 810.6 Exemptions.

(a) The Freedom of Information Act exempts from disclosure nine categories of records which are described in 5 U.S.C. 552(b).

(b) When a request encompasses records which would be of concern to or which have been created primarily by another Federal agency, the record will be made available by the Council only if the document was created primarily to meet the requirements of the Council's regulations implementing section 106 of the National Historic Preservation Act or other provisions of law administered primarily by the Council. If the record consists primarily of materials submitted by State or local governments, private individuals, organizations, or corporations, to another Federal agency in fulfillment of requirements for receiving assistance, permits, licenses, or approvals from the agency, the Council may refer the request to that agency. The requester shall be notified in writing of the referral.

PART 811—CONFLICTS OF INTEREST

Sec.
811.1 General provisions.
811.2 Scope.
811.3 Financial interests.
811.4 Outside work and activities.
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811.7 Statements of employment and financial interest.
811.8 Review and analysis of statements.
811.9 Procedures for resolving conflicts of interest—members.
811.10 Procedures for resolving conflicts of interest—employees.
811.11 Definitions.

Authority: E.O. 11222; 5 CFR Parts 734, 735, and 738; Pub. L. 95-521 Ethics In Government Act, (5 U.S.C. 301).

Source: 47 FR 25520, June 14, 1982, unless otherwise noted.

§ 811.1 General provisions.

(a) *Purpose.* These regulations set forth Council policies and identify principle laws and regulations that relate to member and employee conflict of interest responsibilities. The regulations are applicable to all members of the Council and their designees, both ex officio and appointed, and to all specified employees of the Council.

(b) *General policy.* Members and employees of the Council are expected to maintain high standards of honesty, integrity, impartiality, and conduct to ensure the proper performance of government business and the continual trust and confidence of citizens in their government. It is the intent of these regulations that members and employees avoid any action that might result in or create the appearance of (1) using public office for private gain; (2) giving preferential treatment to any organization or person; (3) impeding government efficiency or economy; (4) losing complete independence or impartiality of action; (5) making a government decision outside official channels; or (6) affecting adversely the confidence of the public in the integrity of the government.

(c) *Member and employee responsibility.* It is the responsibility of members and employees to familiarize themselves and comply with these regulations.

§ 811.2 Scope.

(a) *Content.* These regulations prescribe policies and procedures for the avoidance of conflicts of interests in connection with members' or employees' Council positions or in the discharge of their official Council responsibilities, and set out the requirements for reporting and reviewing financial interests and outside employment.

(b) *Types of requirements.* Members and employees have a duty to avoid apparent or actual conflicts of interest pursuant to two authorities. First, 18 U.S.C. 203, 205, 208 and 209 impose criminal sanctions on officers and employees of the Federal government, including special government employees, who participate in certain official activities where they have a conflicting personal financial interest. Second, Executive Order 11222 prescribes standards of ethical conduct for government officers and employees and special government employees and requires officers and employees and special government employees occupying certain government positions to report all financial interests and outside employment and certain affiliations. These authorities have the common objective of assuring that government officers and employees conduct government business free from the constraints that conflicting interests might present.

(c)(1)(i) Members of the Council fall into three groups: "Special government employees", "officers or employees of the Executive Branch", and "officers and employees of the Legislative Branch."

(ii) "Special government employees", as defined by 18 U.S.C. 202, are those Council members who have been appointed or designated to perform for fewer than 130 days per year. Included in this category for purposes of these regulations are all private members, the mayor, the governor, the Chairman of the National Trust for Historic Preservation, and the President of the National Conference of State Historic Preservation Officers.

(iii) The Secretaries of Interior and Agriculture and their designees and the heads of the four other agencies of the United States appointed by the President and their designees are "officers and employees of the Executive Branch."

(iv) The Architect of the Capitol is an "officer or employee of the Legislative Branch" who is appointed by the President.

(2) For purposes of these regulations, unless otherwise specified, all members of the Council and their designees shall be referred to as "members" regardless of their classification under other authorities.

(3) All Council staff members are referred to as "employees."

§ 811.3 Financial interests.

(a) *Policy*. A personal financial interest may create an actual or apparent conflict of interest. This section sets forth standards of conduct to avoid such conflicts.

(b) *Restrictions—Members and Employees* No member or employee shall—

(1) Have a direct or indirect financial interest that conflicts substantially or appears to conflict substantially with the member's or employee's Council duties and responsibilities; or

(2) Engage, directly or indirectly, in financial transactions resulting from, or primarily relying on, information obtained through the member's or employee's Council membership or employment.

§ 811.4 Outside work and activities.

(a) *Policy*. Under certain circumstances, outside work or activities may create an actual or apparent conflict of interest. In general, outside work or activities are permitted to the extent that they do not prevent employees from devoting their primary interests, talents, and energies to the accomplishment of their work for the Council or tend to create a conflict or appearance of conflict between the private interests of members or employees and their Council responsibilities.

(b) *Restrictions—Members who are heads of Federal agencies and their designees and the Architect of the Capitol and his designee:* (1) It shall not be considered to be a conflict of interest for members who are the heads of Federal agencies or their designees or for the Architect of the Capitol or his designee to engage in the performance of their statutory duties under other provisions of law. The Council may adopt procedures for dealing with instances where an undertaking proposed or sponsored by a member's agency or by the Architect of the Capitol comes before the Council.

(2) Members who are the heads of Federal agencies and their designees and the Architect of the Capitol and his designee may not engage in outside activities not compatible with the full and proper discharge of the members' official duties and responsibilities as members of the Council.

(3) Members who are the heads of Federal agencies and their designees shall abide by the conflict of interest regulations of their own agencies except when they are acting in their official capacities as Council members.

(c) *Restrictions—other Members:* Members not covered by paragraph (b) of this section shall not:

(1) Engage in outside activities not compatible with the full and proper discharge of the member's official duties and responsibilities as a member of the Council;

(2) Perform outside work or engage in outside activities (i) that are of such a nature that they may be reasonably construed by the public to be the official acts of the Council, (ii) that involve the use of Council facilities, equipment, and supplies of any kind, or (iii) that involve the use for private gain of official Council information not available to the public;

(3) Receive any salary or anything of monetary value from a private source as compensation for services to the Council (18 U.S.C. 209); or

(4) Use the member's Council employment to coerce a person to provide financial benefit to the member or another person.

(d) *Restrictions-Employees:* No employee shall—

(1) Engage in outside employment or other outside activity not compatible with the full and proper discharge of the duties and responsibilities of the employee's Council employment; or

(2) Engage in any activity prohibited by paragraphs (c) (2), (3), and (4) of this section.

§ 811.5 Gifts, entertainment and favors.

Members or employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value from a person who has, or is seeking to obtain, business or financial relations with the Council or has interests that may be substantially affected by the performance or nonperformance of Council duties. The Council adopts the exceptions to this prohibition set forth in 5 CFR 735.202 (b) (1) through (4).

§ 811.6 Other conflicts.

(a) *Use of Council property.* No member or employee shall use or allow the use of Council property for other than officially approved activities.

(b) *Use of Council membership.* No member who is a "special government employee" under § 811.2(c) shall use his Council membership for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for the member or another person.

(c) *Misuse of information.* No member or employee shall use for private gain or allow the use of inside information which has not been made available to the public. Inside information is information obtained through or in connection with the member's Council membership or the employees' Council employment.

(d) *Indebtedness; gambling, betting and lotteries; conduct prejudicial to the Council; miscellaneous provisions.* Members and employees shall be bound by the terms of 5 CFR 735.207 through 735.210.

(e) *Post-employment conflicts.* Members and employees shall comply with the terms of 5 CFR Part 737 regarding post-employment conflicts of interest.

§ 811.7 Statements of employment and financial interest.

(a) *General.* All employees who are classified at GS-13 or above or at comparable pay levels and all members shall file a Statement of Employment and Financial Interest.

(b) *When to file.* Each member or employee required to file a Statement of Employment and Financial Interest shall file such a Statement with the Ethics Counselor at the time of entrance on duty as a new member or employee, or within thirty days after the Ethics Counselor notifies a member or employee of the need to file such a Statement.

(c) *Members who have filed elsewhere.* A member who has filed a Statement of Employment and Financial Interest under 2 U.S.C. 701, *et seq.* or 5 U.S.C. App. sec. 201, *et seq.*, may satisfy these regulations by submitting that Statement to the Ethics Counselor.

(d) *What to report.* (1) Statements of Employment and Financial Interest shall be made on Department of the Interior forms DI-212 and DI-213, unless otherwise specified in these regulations. Employees and Federal members shall use form DI-212 and all private members shall use form DI-213. The Executive Director shall use SF 278. Federal members who have filed SF 278 or another equivalent form may use those forms. Forms DI-212, DI-213 and SF 278 are available from the Ethics Counselor.

(2) Members and employees shall disclose all employment, outside activities or financial interests that relate to, or appear to relate to, the member's or employee's work at the Council.

(3) Members and employees must file a supplementary Statement of Employment and Financial Interests if pertinent information arises or is discovered after any Statement is filed.

(4) If any information required to be included on a Statement of Employment and Financial Interests or supplementary Statement is not known to the member or employee but is known to another person, the member or the employee shall request that other person to submit to the Ethics Counselor information on the member's or employee's behalf.

(e) *Confidentiality of member's and employee's statements.* (1) Except for Statements filed pursuant to 2 U.S.C. 701, *et seq.*, or 5 U.S.C. App. 201, *et seq.*, and submitted to the Council under paragraph (c) of this section, and except for the Statement of the Executive Director, each Statement of Employment and Financial Interest will be held in confidence. The Ethics Counselor is responsible for maintaining the Statements in strict confidence. Members and employees having access to Statements shall not allow information to be disclosed from Statements except to those individuals who must have access in order to carry out responsibilities assigned by these regulations or specific law.

(2) Statements of Employment and Financial Interest will be retained by the Ethics Counselor. All Statements shall be destroyed two years after a member or employee leaves a position in which a Statement is required or two years after the member or employee leaves the Council, whichever is earlier.

§ 811.8 Review and analysis of statements.

(a) *Review by Ethics Counselor.* Each Statement of Employment and Financial Statement shall be reviewed by the Ethics Counselor to ensure that the member or employee is in compliance with these regulations. The Ethics Counselor will exercise judgment and reasonableness in reviewing Statements, but will be alert to potential, actual, or apparent conflicts which may be indicated.

(b) *Determination of conflict and referral for resolution.* If a member's or employee's Statement of Employment and Financial Interest reflects a potential, actual, or apparent conflict, the Ethics Counselor shall endeavor to resolve the matter informally with the member or employee. If a member's conflict cannot be resolved, the Ethics Counselor shall refer the member's Statement and a report of efforts made to determine and resolve the conflict to the Chairman of the Council for appropriate action. If an employee's conflict cannot be resolved, the Ethics Counselor shall refer the employee's Statement and a report of efforts made to determine and resolve the conflict to the Executive Director for appropriate action.

(c) *Opportunity to provide information.* At all stages in the review process, members and employees shall be provided full opportunity to offer information and explanation prior to any final determination.

§ 811.9 Procedures for resolving conflicts of interest—members.

(a) *Remedial action.* (1) Members shall disqualify themselves from participating in any Council proceeding involving any matter in which they have a potential, actual, or apparent conflict of interest. In lieu of disqualification, members may divest themselves of the interest, establish a blind trust, or otherwise eliminate the conflict of interest.

(2) Members with unresolved conflicts of interest may be disqualified by the Chairman.

(b) *Chairman's authority.* The Chairman of the Council is authorized to take whatever remedial action authorized by these regulations that is appropriate to protect the integrity of the Council.

§ 811.10 Procedures for resolving conflicts of interest—employees.

(a) *Remedial action.* Violations of these regulations by an employee may be cause for mandatory remedial action. If the Executive Director decides that remedial action is required, the Executive Director shall initiate immediate action to eliminate the conflict or apparent conflict of interest within a reasonable time. Remedial action may include reassignment or restriction of the employee, diverstiture of the interest, establishment of a blind trust, or other means by which the conflict or apparent conflict is eliminated.

(b) *Disciplinary action.* Employees who refuse to comply with an order for remedial action shall be considered to be in violation of these regulations and may be subject to disciplinary action, including suspension or removal from their positions.

(c) *The Executive Director's authority and decision.* The Executive Director is authorized to order resolution of conflict of interest situations and the Executive Director's decision regarding remedial action shall be final.

§ 811.11 Definitions.

(a) *Apparent conflict.* A situation where a reasonable member of the public could suppose a member or employee to be in conflict, even though the member or employee might not be.

(b) *Conflict or actual conflict.* A situation where a member's or employee's duties or responsibilities at the Council are or will be affected or influenced by the member's or employee's financial interest or outside employment of activities.

(c) *Direct interest.* Ownership or part ownership of lands, stocks, bonds, or other holdings by a member or employee in the member's or employee's name. Direct interest includes the holdings of a spouse and minor child and the holdings of other relatives, including in-laws, who live in the member's or employee's home.

(d) *Indirect interest.* Ownership or part ownership of land, stocks, bonds, or other holdings by a member or employee in the name of another person where the member or employee reaps the benefits of the ownership. An indirect interest is considered to be a direct interest for purposes of these regulations.

(e) *Outside work and activities.* All gainful employment and other activities other than the performance of official duties.

(f) *Potential conflict.* A situation where a conflict or an apparent conflict is likely to occur in the future.

PART 812—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE ADVISORY COUNCIL ON HISTORIC PRESERVATION

Sec.
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812.102 Application.
812.103 Definitions.
812.104—812.109 [Reserved]
812.110 Self-evaluation.
812.111 Notice.
812.112—812.129 [Reserved]
812.130 General prohibitions against discrimination.
812.131—812.139 [Reserved]
812.140 Employment.
812.141—812.148 [Reserved]
812.149 Program accessibility: Discrimination prohibited.
812.150 Program accessibility: Existing facilities.
812.151 Program accessibility: New construction and alterations.
812.152—812.159 [Reserved]
812.160 Communications.
812.161—812.169 [Reserved]
812.170 Compliance procedures.
812.171—812.999 [Reserved]

AUTHORITY: 29 U.S.C. 794.

SOURCE: 51 FR 22896, June 23, 1986, unless otherwise noted.

§ 812.101 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 812.102 Application.

This part applies to all programs or activities conducted by the agency.

§ 812.103 Definitions.

For purposes of this part, the term—

"*Assistant Attorney General*" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"*Auxiliary aids*" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

"*Complete complaint*" means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

"*Facility*" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"*Handicapped person*" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(1) "Physical or mental impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alocoholism.

(2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

"*Historic preservation programs*" means programs conducted by the agency that have preservation of historic properties as a primary purpose.

"*Historic properties*" means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

"*Qualified handicapped person*" means—

(1) With respect to preschool, elementary, or secondary education services provided by the agency, a handicapped person who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency.

(2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can acheive the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(3) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(4) "Qualified handicapped person" is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 812.140.

"*Section 504*" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

"*Substantial impairment*" means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§§ 812.104—812.109 [Reserved]

§ 812.110 Self-evaluation.

(a) The agency shall, by August 24, 1987, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, until three years following the completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified, and

(2) A description of any modifications made.

§ 812.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 812.112—812.129 [Reserved]

§ 812.130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangments, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified handicapped persons to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activites of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§§ 812.131—812.139 [Reserved]

§ 812.140 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§§ 812.141—812.148 [Reserved]

§ 812.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 812.150, no qualified handicapped person shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 812.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 812.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods*—(1) *General.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(2) *Historic preservation programs.* In meeting the requirements of § 812.150(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to handicapped persons. In cases where a physical alteration to an historic property is not required because of § 812.150(a)(2) or (a)(3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide handicapped persons into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by October 21, 1986, except that where structural changes in facilities are undertaken, such changes shall be made by August 22, 1989, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by February 23, 1987, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 812.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151-4157), as established in 41 CFR 101-19.600 to 101-19.607, apply to buildings covered by this section.

§§ 812.152—812.159 [Reserved]

§ 812.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf person (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and adminstrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 812.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§§ 812.161—812.169 [Reserved]

§ 812.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The General Counsel shall be responsible for coordinating implementation of this section. Complaints may be sent to the General Counsel, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Washington, DC 20004.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § 812.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[51 FR 22896, June 23, 1986, as amended at 51 FR 22893, June 23, 1986]

§§ 812.171—812.999 [Reserved]

CHAPTER IX—PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

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PART 901—BYLAWS OF THE CORPORATION

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AUTHORITY: Sec. 6(5), Pub. L. 92-578, 88 Stat. 1270(5) (40 U.S.C. 875(5)).

SOURCE: 40 FR 41524, Sept. 8, 1975, unless otherwise noted.

§ 901.1 Title and office.

(a) *Title.* The name of the Corporation is the Pennsylvania Avenue Development Corporation.

(b) *Office.* The office of the Corporation shall be in the city of Washington, District of Columbia.

§ 901.2 Establishment.

(a) *Creation.* The Corporation, a wholly owned instrumentality of the United States subject to the Government Corporation Control Act (31 U.S.C. 841 et seq.), was established by the Pennsylvania Avenue Development Corporation Act of 1972 (Pub. L. 92-578, 86 Stat. 1266 (40 U.S.C. 871 et seq.)), as amended, hereinafter referred to as "the Act".

(b) *Purposes.* The purposes for which this Corporation was established are those stated and promulgated by Congress in the Act.

§ 901.3 Board of directors.

(a) *Powers and responsibilities.* The business, property and affairs of the Corporation shall be managed and controlled by the Board of Directors, and all powers specified in the Act are vested in them. The Board may, at its discretion and as hereinafter provided, delegate authority necessary to carry on the ordinary operations of the Corporation to officers and staff of the Corporation.

(b) *Composition; number; selection; terms of office.* The Board of Directors shall be comprised of fifteen voting members and eight nonvoting members. The powers and management of the Corporation shall reside with the fifteen voting members, and the procedures of the Board shall be determined by them.

(1) The fifteen voting members shall include the seven government agency representatives specified in subsection 3(c) of the Act (or, their designees), and eight individuals meeting the qualifications of that subsection, appointed by the President of the United States from private life, at least four of whom shall be residents and registered voters of the District of Columbia.

(2) The Chairman and Vice Chairman shall be designated by the President of the United States from among those members appointed from private life.

(3) Upon his appointment, the Chairman shall invite the eight representatives designated in subsection 3(g) of the Act to serve as non-voting members of the Board of Directors.

(4) Each member of the Board of Directors appointed from private life shall serve a term of six years from the expiration of his predecessor's term; except that the terms of the Directors first taking office shall begin on October 27, 1972 and shall expire as designated at the time of appointment. A Director may continue to serve until his successor has qualified.

(5) A Director appointed from private life wishing to resign shall submit a letter of resignation to the President of the United States, and his resignation shall become effective upon the date of the President's acceptance thereof.

(6) A Director, appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed, shall serve for the remainder of such term.

(c) *Meetings.* (1) The Board of Directors shall meet and keep its records at the office of the Corporation.

(2) Meetings of the Board of Directors shall be held at the call of the Chairman, but not less often than once every three months. The Chairman shall also call a meeting at the written request of any five voting members.

(3) The Chairman shall direct the Secretary to give the members of the

Board notice of each meeting, either personally, or by mail, or by telegram, stating the time, the place and the agenda for the meeting. Notice by telephone shall be personal notice. Any Director may waive, in writing, notice as to himself, whether before or after the time of the meeting, and the presence of a Director at any meeting shall constitute a waiver of notice of that meeting. Notice, in whatever form, shall be given so that a Director will have received it five working days prior to the time of the meeting.

(4) Unless otherwise limited by the notice thereof, any and all Corporation business may be transacted at any meeting.

(5) The Chairman shall preside at meetings of the Board of Directors, or the Vice Chairman in the absence of the Chairman. In the event of the absence of both the Chairman and the Vice Chairman, the Directors present at the meeting shall designate a Presiding Officer.

(d) *Quorum.* The presence of a majority of the number of voting Directors serving at the time of a meeting of the Board shall constitute a quorum for the transaction of business at such meeting of the Board. The act of a majority of the voting Directors at any meeting at which there is a quorum shall be an act of the Board of Directors. If there shall be less than a quorum at any meeting, a majority of the voting Directors present may adjourn the meeting until such time as a quorum can practically and reasonably be obtained.

(e) *Directors serving in stead.* Each member of the Board of Directors specified in paragraphs (1) through (7) of subsection 3(c) of the Act, if unable to serve in person, may designate up to two officials from his agency or department to serve on the Board in his stead. Such designation shall be effected by a letter of appointment, from the Director specified in the Act, received by the Chairman prior to or at a meeting of the Board of Directors. If two officials are so designated, then the Director specified in the Act shall identify one as the First Designee and the other as the Second Designee. The Second Designee may only serve as a Director if the First Designee is not in attendance at a meeting of the Board of Directors. An official designated to serve in stead shall serve as the voting Director of the represented agency until the Chairman receives written notice from the Director specified in the Act, or his successor, that the designation is rescinded.

(f) *Vote by proxy.* Voting members of the Board of Directors unable to attend a meeting may vote by proxy on resolutions which have been printed in the agenda in advance for the meeting.

(1) A Director unable to attend a meeting of the Board may submit a vote to be cast by the Presiding Officer by means of a written signed statement of his vote and the resolution to which it pertains together with any statement bearing on the matter the Director wishes to have read. The proxy vote shall be submitted to the Chairman with a separate signed copy to the Secretary, to be received not later than the close of business of the day prior to the date fixed for the meeting.

(2) The Presiding Officer shall cast proxy votes received by the Chairman in the following manner: (i) Upon the close of discussion on a resolution for which there has been submitted one or more valid proxy votes, the Presiding Officer shall announce that he holds proxy vote(s) from named Director(s), and shall read any explanatory statements submitted by the Director(s) voting by proxy; (ii) The Presiding Officer shall take the vote of the Directors present and then declare the proxy votes in hand; (iii) The Secretary shall orally verify the validity of the votes submitted to be cast by proxy, and shall record them with the votes cast by the Directors present on the resolution.

(3) Proxy votes shall not be utilized to effect the presence of a quorum.

(g) *Compensation of Directors.* Members of the Board of Directors shall be compensated in the manner provided in section 3 of the Act.

(h) *Approval of annual budget.* Upon completion by the staff of a draft annual budget request, the Chairman shall call a meeting of the Board of Directors for its review and consideration. Upon approval by the Board of the draft budget request, it may be submitted to the Office of Management and Budget.

[40 FR 41524, Sept. 8, 1975, as amended at 48 FR 20903, May 10, 1983]

§ 901.4 Officers.

(a) *General provisions.* The corporate officers of the Corporation shall consist of a President, an Executive Director, two Assistant Directors, a Secretary (who shall be appointed by the Chairman from among the staff of the Corporation), and such other officers as the Board of Directors may from time-to-time appoint. Any corporate officer elected or appointed by the Board of Directors may be removed at any time, with or without cause, by the affirmative vote of a majority of the Board of Directors.

(b)(1) *Powers and duties of the President.* The Chairman of the Board of Directors shall be the President and chief executive officer of the Corporation and shall have the general powers and duties of supervision and management usually vested in the office of a president of a corporation. The President shall see that all resolutions and policies of the Board are carried into effect, and shall have power to execute contracts, leases, agreements, and other documents necessary for the operation of the Corporation.

(2) *Assumption of powers and duties by Vice Chairman.* In the event that the position of Chairman becomes vacant, the Vice Chairman shall promptly notify the President of the United States in writing to that effect and upon giving such notice, shall assume the Chairman's powers and duties as President and Chief Executive Officer of the Corporation, including specific powers and duties delegated to the Chairman by the Board of Directors. Such assumption of the Chairman's powers and duties shall cease upon the appointment or designation of a new Chairman or Acting Chairman by the President of the United States. The Vice Chairman shall also assume the powers and duties of the Chairman in the event of the latter's incapacity, if the Chairman so requests in writing, or if a majority of the voting members of the Board of Directors finds by resolution that the Chairman is unable to exercise the powers and duties of his office. Such assumption of the Chairman's powers and duties shall cease upon the Vice Chairman's receipt of a letter from the Chairman stating that he or she is able to resume the exercise of the powers and duties of his office.

(c) *Appointment of certain officers.* The Board of Directors shall appoint an Executive Director and two Assistant Directors, who may be appointed and compensated without regard to the provisions of Title 5 of the United States Code governing appointments in the competitive service and Chapter 51 and subchapter IV of Chapter 53 of Title 5 of the United States Code. Between meetings of the Board of Directors the Chairman may make appointments to the foregoing positions, when they become vacant by resignation or otherwise. However, the Chairman shall move to have such interim appointments confirmed at the next meeting of the Board. The Chairman shall have power to increase or decrease the salaries of the officers appointed under this section.

(d) *Powers and duties of the Executive Director.* The Executive Director shall be the chief of the Corporation's staff and shall have general powers of supervision and management over the administration of the Corporation. The Executive Director shall have power to:

(1) Execute contracts, agreements, and other documents necessary for planning and design work and for ordinary operations of the Corporation.

(2) Hire staff (including temporary or intermittent experts and consultants).

(3) Procure space, equipment, supplies, and obtain interagency and commercial support services.

(4) Direct and manage the day-to-day operations and work of the Corporation.

(5) Supervise planning and development activities of the Corporation in accordance with the development plan and resolutions of the Board of Directors.

(6) Perform such other duties and exercise such powers as the President and Board of Directors may prescribe.

(e) *Powers and duties of the Assistant Director/Legal.* The Assistant Director/Legal shall be the General Counsel of the Corporation, advising the Board of Directors and the staff on all legal matters affecting the functioning of the Corporation. He shall:

(1) Coordinate with the Department of Justice in assuring that the interests of the Corporation are represented in any litigation arising from its authorities or actions.

(2) Advise the Board of Directors and the staff of statutory or regulatory requirements, and assure compliance therewith.

(3) Prepare or review all contracts, agreements or other documents of a legal nature.

(4) Prepare or review all draft legislation, regulations, official notices and other legal publications.

(5) Perform such other duties as may be prescribed by the Board of Directors, the President, or the Executive Director.

(f) *Powers and duties of the Assistant Director/Development.* The Assistant Director/Development shall advise the Board of Directors, officers and staff of the Corporation on all development activities to accomplish the goals of the development plan. He shall:

(1) Manage development activities in accordance with the development plan.

(2) Function as a key management official performing a wide range of duties required to accomplish the rebuilding of Pennsylvania Avenue.

(3) Provide managerial responsibility for the work of all project managers and consultants relating to development projects.

(4) Coordinate the tasks of other staff professionals as required for accomplishment of projects.

(5) Be liaison between the Corporation and other governmental agencies that review projects in the development area.

(6) Perform such other duties as may be prescribed by the Board of Directors, the President, or the Executive Director.

(g) *Powers and Duties of the Secretary.* The Secretary, to be appointed by the Chairman from among the Corporation's staff, shall give notice of all meetings of the Board of Directors and record and keep the minutes thereof, keep in safe custody the seal of the Corporation, and shall affix the same to any instrument requiring it. When so affixed, the seal shall be attested by the signature of the Secretary. The Secretary shall also perform such other duties as may be prescribed by the Board of Directors, the President, or the Executive Director.

[40 FR 41524, Sept. 8, 1975, as amended at 47 FR 34536, Aug. 10, 1982]

§ 901.5 Annual report.

The Executive Director shall prepare annually a comprehensive and detailed report of the Corporation's operations, activities, and accomplishments for the review of the Board of Directors. Upon approval by the Board, the Chairman shall transmit the report in January of each year to the President of the United States and to the Congress.

§ 901.6 Seal.

The Corporation may adopt a corporate seal which shall have the name of the Corporation and year of incorporation printed upon it. The seal may be used by causing it or a facsimile thereof to be impressed, affixed, or reproduced.

§ 901.7 Amendments.

These bylaws may be altered, amended, or repealed by the Board of Directors at any meeting, if notice of the proposed alteration, amendment, or repeal is contained in the notice of the meeting.

PART 902—FREEDOM OF INFORMATION ACT

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AUTHORITY: 5 U.S.C. 552; 52 FR 10012-10019 (March 27, 1987); E.O. 12600, 52 FR 23781 (June 23, 1987).

SOURCE: 41 FR 43143, Sept. 30, 1976, unless otherwise noted.

Subpart A—Applicability and Policy

§ 902.01 Purpose and applicability.

This part contains regulations of the Corporation implementing 5 U.S.C. 552, as amended. It informs the public about where and how the Corporation's records may be obtained. The following provisions are applicable to all records of the Corporation in existence at the time a request for records is made. The regulations establish fee schedules applicable to the search and copying of requested records. This part identifies the officials having authority to act on requests and prescribes the procedures to appeal decisions which initially deny disclosure. Indexes maintained to reflect all records subject to this part are available for public inspection and copying as provided herein.

§ 902.02 Statement of policy.

In keeping with the spirit of the Freedom of Information Act, 5 U.S.C. 552, the policy of the Corporation is one of full and responsible disclosure of its records to the public. Therefore, all records of the Corporation, unless otherwise exempted under Subpart F of this part, are declared to be available for public inspection and copying. Each officer and employee of the Corporation is directed to cooperate to this end and shall make records available to the public with reasonable promptness. A record may not be withheld from the public solely because its release might suggest administrative error or embarrass an officer or employee of the Corporation.

§ 902.03 Definitions.

As used in this part—

(a) "Act" means section 552 of Title 5, United States Code, as amended, Pub. L. 90-23, 81 Stat. 54, June 5, 1967; as amended, Pub. L. 93-502, 88 Stat. 1561, November 11, 1974. Pub. L. 90-23 repealed and superseded Pub. L. 89-487, 80 Stat. 250, July 4, 1966, sometimes referred to as the "Freedom of Information Act" or "Public Information Act".

(b) "Chairman" means the Chairman of the Corporation's Board of Directors and President of the Corporation.

(c) "Corporation" means the Pennsylvania Avenue Development Corporation, including the Board of Directors, Executive Officers, Corporation staff, and any subordinate organizational units operating under the Pennsylvania Avenue Development Corporation Act of 1972, Pub. L. 92-578, 86 Stat. 1266 (40 U.S.C. 871 et seq.), as amended.

(d) "Person" means "person" as defined in 5 U.S.C. 551(2).

(e) "Records" means any and all writing, drawings, maps, recordings, tapes, films, slides, photographs, or other documentary materials by which information is preserved.

(f) "Submitter" means any person or entity that provides or has provided information to the Corporation or about which the Corporation possess records subject to Exemption 4 of the Freedom of Information Act.

(g) "Workday" means a calendar day excluding Saturday, Sunday and Federal holidays, office hours being 9 a.m. to 5 p.m.

[41 FR 43143, Sept. 30, 1976, as amended at 53 FR 10374, Mar. 31, 1988]

Subpart B—General Administration

§ 902.10 Delegation of administration of this part.

Except as provided in Subpart H of this part, authority to administer this part is delegated to the Administrative Officer, who shall act upon all requests for access to records which are received by the Corporation from any person citing the Act.

[41 FR 43143, Sept. 30, 1976, as amended at 48 FR 17354, Apr. 22, 1983]

§ 902.11 How records may be requested.

In accordance with § 902.41 of Subpart E of this part all requests for records shall be made to the Administrative Officer, Pennsylvania Avenue Development Corporation, 1331 Pennsylvania Avenue, NW, Suite 1220 North, Washington, DC 20004.

[41 FR 43143, Sept. 30, 1976, as amended at 48 FR 17354, Apr. 22, 1983; 50 FR 45824, Nov. 4, 1985]

§ 902.12 Maintenance of statistics; annual report to Congress.

(a) The Administrative Officer shall maintain records of:

(1) The fees collected by the Corporation for making records available under this part;

(2) The number of denials of requests for records made under this part, and the reasons for each denial;

(3) The number of appeals arising from denials, the result of each appeal, and the reasons for the action upon each appeal that results in a denial of information;

(4) The names and titles or positions of each person responsible for each denial of records requested under this part, and the number of instances of participation for each person;

(5) The results of each proceeding conducted pursuant to subsection 552(a)(4)(f) of Title 5, United States Code, including a report of the disciplinary action against the official or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

(6) Every rule made by the Corporation affecting or implementing the Act;

(7) The fee schedule listing fees for search and duplication of records pursuant to request under the Act; and

(8) All other information which indicates efforts to administer fully the letter and spirit of the Act.

(b) The Administrative Officer shall annually prepare a report accounting for each item in paragraph (a) of this section for the prior calendar year. On or before March 1st of each year, the report shall be submitted to the Speaker of the House of Representatives and the President of the Senate for referral to the appropriate committees of Congress.

[41 FR 43143, Sept. 30, 1976, as amended at 48 FR 17354, Apr. 22, 1983]

§ 902.13 Indexes of Corporation records.

(a) The Administrative Officer shall be responsible for maintenance, publication, distribution and availability for inspection and copying of the current indexes and supplements which are required by 5 U.S.C. (a)(2). Such indexes shall be published promptly on a quarterly basis unless the Chairman determines by order published in the FEDERAL REGISTER that the pubication would be unnecessary and impractical.

(b) The index of materials under this subpart covers all materials issued, adopted, or promulgated after July 4, 1967 by the Corporation. However, earlier materials may be included in the index to the extent practicable. Each index contains instruction for its use.

[41 FR 43143, Sept. 30, 1976, as amended at 48 FR 17354, Apr. 22, 1983]

§ 902.14 Deletion of nondiscloseable information from requested records.

Whenever a requested record contains information which falls within one of the exempted categories of Subpart F of this part, identifying details shall be deleted from the record before it is made available for public inspection and copying. When a requested record contains both discloseable and nondiscloseable information, only that portion which is reasonably segregable after deletion of the nondiscloseable portions, will be released. If the information in the discloseable portion is readily available from another source and that source is made known to the person making the request, the Corporation need not disclose the requested record. In all cases where a deletion is made, an explanation of the deletion shall be attached to the record made available for inspection, distribution, or copying. Appeal of deletions shall be made in accordance with Subpart H of this part.

§ 902.15 Protection of records.

(a) No person may, without permission of the Administrative Officer, remove from the Corporation's offices any record made available to him for inspection or copying. In addition, no person may steal, alter, multilate, obliterate, or destroy, in whole or in part, such a record.

(b) Section 641 of Title 18 of the United States Code provides, in pertinent part, as follows:

> (1) Whoever * * * steals, purloins, knowingly converts to his use or the use of any other or without authority sells, conveys or disposes of any record * * * or thing of value shall be fined not more than $10,000 or imprisoned not more than 10 years or both; but if the value of such property does not exceed the sum of $100, he shall be fined not more than $1,000 or imprisoned not more than one year or both. * * *

(c) Section 2071 of Title 18 of the United States Code provides, in pertinent part, as follows:

> (1) Whoever willfully and unlawfully conceals, removes, multilates, obliterates, or destroys, or attempts to do so, or with intent to do so takes and carries away any record, proceeding, map, book, paper document, or other thing, filed or deposited * * * in any public office, or with any * * * public officer of the United States, shall be fined not more than $2,000 or imprisoned not more than 3 years, or both.

[41 FR 43143, Sept. 30, 1976, as amended at 48 FR 17354, Apr. 22, 1983]

Subpart C—Publication in the Federal Register

§ 902.20 Applicability.

Subject to the exemptions in Subpart F of this part, the Corporation, for the guidance of the public, shall submit to the Director of the Federal Register for publication—

(a) Descriptions of the Corporation's organization and functional responsibilities and the designation of places at which the public may secure information, obtain forms and applications, make submittals or requests, or obtain decisions;

(b) Statements of the general course and method by which the Corporation's functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(c) Rules of procedure, descriptions of forms available, and instructions as to the scope and contents of all papers, reports, or examinations;

(d) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability; and.

(e) Each amendment, revision, or repeal of the foregoing.

§ 902.21 Publication in the Federal Register shall be constructive notice of information that affects the public.

(a) All material described in § 902.20 shall be published in the FEDERAL REGISTER. For the purpose of this section, material that is reasonably available to the class of persons affected by it is considered to be published in the FEDERAL REGISTER when it is incorporated by reference with the approval of the Director of the Federal Register.

(b) Publication in the FEDERAL REGISTER of all relevant information shall be considered constructive notice of information that affects the public, except that no person shall be required to resort to or be adversely affected by any matter which is required to be published in the FEDERAL REGISTER and is not so published unless such person has actual and timely notice of the terms of the unpublished matter.

Subpart D—Availability of Records Not Published in the Federal Register

§ 902.30 Applicability.

(a) This subpart implements section 552(a)(2) of Title 5, United States Code, as amended by 88 Stat. 1561 (1974). It prescribes the rules governing the availability for public inspection and copying of the following:

(1) Final opinions or orders (including concurring and dissenting opinions, if any) made in the adjudication of cases;

(2) Statements of policy or interpretations which have been adopted under the authority of the Corporation's enabling act, including statements of policy or interpretation concerning a particular factual situation, if they can reasonably be expected to have precedential value in any case involving a member of the public in a similar situation, and have not been published in the FEDERAL REGISTER.

(3) Administrative staff manuals or instructions to the staff of the Corporation which affects any member of the public. Included within this category are manuals or instructions which prescribe the manner or performance of any activity by any person. Excepted from this category are staff manuals or instructions to staff concerning internal operating rules, practices, guidelines and procedures for Corporation negotiators and inspectors, the release of which would substantially impair the effective performance of their duties.

(4) Documents and materials offered for sale under the auspices of the Corporation.

(5) Any index of materials which is required to be maintained by the Corporation under § 902.13.

(b) Records listed in paragraph (a) of this section, which the Corporation does not make available for public inspection and copying, or that are not indexed as required by § 902.13, may not be cited, relied upon, or used as a precedent by the Corporation to adversely affect any person, unless the person against whom it is cited, relied upon, or used, has had actual and timely notice of that material.

(c) This subpart shall not apply to information published in the FEDERAL REGISTER or that is a reasonably described record covered by Subpart E of this part.

§ 902.31 Access, inspection and copying.

(a) Records listed in § 902.30(a), are available for inspection and copying by any person at the Corporation's office, 1331 Pennsylvania Avenue, NW, Suite 1220 North, Washington, DC 20004. Facilities for inspection and copying shall be open to the public every workday.

(b) Records listed in § 902.30(a), that are published and offered for sale, shall be indexed as required under § 902.13, and shall be available for public inspection. Records offered for sale will not be copied by the Corporation for the requester without the approval of the Administrative Officer.

(c) Records listed in § 902.30(a) are subject to Subpart F of this part and access may be restricted by the Corporation in accordance with that subpart. A refusal to disclose may be appealed by the requester under the provisions of Subpart H of this part.

[41 FR 43143, Sept. 30, 1976, as amended at 48 FR 17354, Apr. 22, 1983; 50 FR 45824, Nov. 4, 1985]

Subpart E—Availability of Reasonably Described Records

§ 902.40 Applicability.

This subpart implements section 552(a)(3) of Title 5, United States Code, as amended, and prescribes regulations governing public inspection and copying of reasonably described records in the Corporation's custody. This subpart shall not apply to material which is covered by Subparts C and D of this part, and records exempted under Subpart F of this part.

§ 902.41 Public access to reasonably described records.

(a) Any person desiring access to a record covered by this subpart may make request for records and copies either in person on any workday at the Corporation's office, or by written request. In either instance, the requester must comply with the following provisions;

(1) A written request must be made for the record;

(2) The request must indicate that it is being made under the Freedom of Information Act (section 552 of Title 5, United States Code); and

(3) The request must be addressed to the attention of the Administrative Officer, as provided in § 902.11.

(b) Each request for a record should reasonably describe the particular record sought. The request should specify, to the extent possible, the subject matter of the record, the date when it was made, the place where it was made and the person who made it. If the description is insufficient to process the request, the Public Information offices shall promptly notify the person making the request and solicit further information. The Administrative Officer may assist the person in perfecting the request.

(c) Requests made in person at the Corporation's office during regular working hours (9 a.m. to 5 p.m., Monday through Friday, except Federal holidays) shall be processed as provided in Subpart G of this part. The Corporation shall provide adequate inspection and copying facilities. Original records may be copied, but may not be released from the custody of the Corporation. Upon payment of the appropriate fee, copies will be provided to the requester by mail or in person.

(d) Every effort will be made to make a record in use by the staff of the Corporation available when requested, and availability may be deferred only to the extent necessary to avoid serious interference with the business of the Corporation.

(e) Notwithstanding paragraphs (a) through (d) of this section, informational materials and services, such as press releases, and similar materials prepared by the Corporation, shall be made available upon written or oral request. These services are considered as part of any informational program of the Government and are readily made available to the public. There is no fee for individual copies of such materials as long as they are in supply. In addition, the Corporation will continue to respond, without charge, to routine oral or written inquiries that do not involve direct access to records of the Corporation.

[41 FR 43143, Sept. 30, 1976, as amended at 48 FR 17354, Apr. 22, 1983]

§ 902.42 Request for records of concern to more than one government organization.

(a) If the release of a record covered by this subpart would be of concern to both the Corporation and another Federal agency, the record will be made available only after consultation with the other agency concerned. Records of another agency in the Corporation's possession will not be disclosed without the approval of the other agency.

(b) If the release of a record covered by this subpart would be of concern to both the Corporation and to a foreign, state or local government, the record will be made available by the Corporation only after consultation with the other interested foreign state or local government. Records of a foreign, state or local government will not be disclosed without the approval of the government concerned.

Subpart F—Exemptions From Public Access to Corporation Records

§ 902.50 Applicability.

(a) This subpart implements section 552(b) of Title 5, United States Code, which exempts certain records from public inspection under section 552(a). This subpart applies to records requested under Subparts D and E of this part. The Corporation may, however, release a record authorized to be withheld under §§ 902.52 through 902.59 unless it determines that the release of that record would be inconsistent with a purpose of the aforementioned sections. Examples given in §§ 902.52 through 902.59 of records included within a particular statutory exemption are not necessarily illustrative of all types of records covered by the exemption. Any reasonably segregable portion of a record withheld under this subpart shall be provided to a requester, after deletion of the portions which are exempt under this subpart.

(b) This subpart does not authorize withholding of information or limit the availability of records to the public, except as specifically stated. This subpart is not authority to withhold information from Congress.

§ 902.51 Records relating to matters that are required by Executive order to be kept secret.

Records relating to matters that are specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy, include those within the scope of the following, and any further amendment of any of them, but only to the extent that the records are in fact properly classified pursuant to such Executive order:

(a) Executive Order 11652 of March 8, 1972 (3 CFR 1974 Comp. p. 339);

(b) Executive Order 10865 of February 20, 1960 (3 CFR 1959-1963 Comp. p. 398); and

(c) Executive Order 10104 of February 1, 1950 (3 CFR 1949-1953 Comp., p. 298).

These records may not be made available for public inspection.

§ 902.52 Records related solely to internal personnel rules and practices.

(a) Records related solely to internal personnel rules and practices that are within the statutory exemption include memoranda pertaining to personnel matters such as staffing policies, and policies and procedures for the hiring, training, promotion, demotion, and discharge of employees, and management plans, records, or proposals related to labor-management relationships.

(b) The purpose of this section is to authorize the protection of any record related to internal personnel rules and practices dealing with the relations between the Corporation and its employees.

§ 902.53 Records exempted from disclosure by statute.

(a) Records relating to matters that are specifically exempted by statute from disclosure may not be made available for public inspection. For example: Section 1905 of Title 18, United States Code, protecting trade secrets, processes, and certain economic and other data obtained by examination or investigation, or from reports.

(b) The purpose of this section is to preserve the effectiveness of statutes of the kind cited as an example, in accordance with their terms.

§ 902.54 Trade secrets and commercial or financial information that is privileged or confidential.

(a) Trade secrets and commercial or financial information that are privileged and for which confidentiality is requested by the person possessing such privilege are within the statutory exemption. This includes the following:

(1) Commercial or financial information not customarily released to the public, furnished and accepted in confidence or disclosure of which could reasonably be expected to cause substantial competitive harm, or both;

(2) Statements of financial interest furnished by officers and employees of the Corporation;

(3) Commercial, technical, and financial information furnished by any person in connection with an application for a loan or a loan guarantee;

(4) Commercial or financial information customarily subjected to an attorney-client or similar evidentiary privilege; or,

(5) Materials in which the Corporation has a property right such as designs, drawings, and other data and reports acquired in connection with any research project, inside or outside of the Corporation, or any grant or contract.

(b) The purpose of this section is to authorize the protection of trade secrets and commercial or financial records that are customarily privileged or are appropriately given to the Corporation in confidence. It assures the confidentiality of trade secrets and commercial or financial information obtained by the Corporation through questionnaires and required reports to the extent that the information would not customarily be made public by the person from whom it was obtained. In any case in which the Corporation has obligated itself not to disclose trade secrets and commercial or financial information it receives, this section indicates the Corporation's intention to honor that obligation to the extent permitted by law. In addition, this section recognizes that certain materials, such as research data and materials, formulae, designs, and architectural drawings, have significance not as records but as items of property acquired, in many cases at public expense. In any case in which similar proprietary material in private hands would be held in confidence, material covered in this section may be held in confidence.

(c)(1) *In general.* For commercial or financial information furnished to the Corporation on or after March 30, 1988, the Corporation shall require the submitter to designate, at the time the information is furnished or within a reasonable time thereafter, any information the submitter considers confidential or privileged. Commercial or financial information provided to the Corporation shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with this paragraph.

(2) *Notice to submitters.* The Corporation shall provide a submitter with prompt written notice of a request encompassing its commercial or financial information whenever required under paragraph (c)(3) of this section, and except as is provided in paragraph (c)(7) of this section. Such written notice shall either describe the exact nature of the information requested or provide copies of the records or portions thereof containing the information. Concurrently with its notice to a submitter, the Corporation shall inform a requestor in writing that the submitter is afforded a reasonable period within which to object to disclosure and that the 10 workday initial determination period provided for in 36 CFR 902.60 may therefore be extended.

(3) *When notice is required.* (i) For information submitted to the Corporation prior to March 30, 1988, the Corporation shall provide a submitter with notice of a request whenever:

(A) The information is less than ten years old;

(B) The information is subject to prior express commitment of confidentiality given by the Corporation to the submitter; or

(C) The Corporation has reason to believe that disclosure of the information may result in substantial competitive harm to the submitter.

(ii) For information submitted to the Corporation on or after March 30, 1988, the Corporation shall provide a submitter with notice of a request whenever:

(A) The submitter has in good faith designated the information as confidential, or

(B) The Corporation has reason to believe that disclosure of the information may result in substantial competitive harm to the submitter.

Notice of a request for information falling within the former category shall be required for a period of not more than ten years after the date of submission unless the submitter requests, and provides acceptable justification for, a specific notice period of greater duration. The submitter's claim of confidentiality should be supported by a statement or certification by an officer or authorized representative that the information in question is in fact confidential and has not been disclosed to the public.

(4) *Opportunity to object to disclosure.* Through the notice described in paragraph (c)(2) of this section, the Corporation shall afford a submitter a reasonable period within which to provide the Corporation with a detailed statement of any objection to disclosure. Such statement shall specify all grounds for withholding any of the information under any exemption of the Freedom of Information Act and, in the case of Exemption 4, shall demonstrate why the information is contended to be privileged or confidential. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the Freedom of Information Act.

(5) *Notice of intent to disclose.* The Corporation shall consider carefully a submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose information. Whenever the Corporation decides to disclose information over the objection of a submitter, the Corporation shall forward to the submitter a written notice which shall include:

(i) A statement of the reasons for which the submitter's disclosure objections were not sustained;

(ii) A description of the information to be disclosed; and

(iii) A specified disclosure date.

Such notice of intent to disclose shall be forwarded a reasonable number of days, as circumstances permit, prior to the specified date upon which disclosure is intended. A copy of such disclosure notice shall be forwarded to the requester at the same time.

(6) *Notice of lawsuit.* Whenever a requester brings suit seeking to compel disclosure of information covered by paragraph (c) of this section, the Corporation shall promptly notify the submitter.

(7) *Exceptions to notice requirements.* The notice requirements of this section shall not apply if:

(i) The Corporation determines that the information should not be disclosed;

(ii) The information lawfully has been published or otherwise made available to the public;

(iii) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(iv) The designation made by the submitter in accordance with paragraphs (c)(1) and (c)(3)(ii) of this section appears obviously frivolous; except that, in such case, the Corporation shall provide the submitter with written notice of any final decision to disclose information within a reasonable number of days prior to a specified disclosure date.

[41 FR 43143, Sept. 30, 1976, as amended at 53 FR 10374, Mar. 31, 1988]

§ 902.55 Intragovernmental exchanges.

(a) Any record prepared by a Government officer or employee (including those prepared by a consultant or advisory body) for internal Government use is within the statutory exemption to the extent that it contains—

(1) Opinions, advice, deliberations, or recommendations made in the course of developing official action by the Government, but not actually made a part of that official action, or

(2) Information concerning any pending proceeding or similar matter including any claim or other dispute to be resolved before a court of law, administrative board, hearing officer, or contracting officer.

(b) This section has two distinct purposes. One is to protect the full and frank exchange of ideas, views, and opinions necessary for the effective functioning of the Government and to afford this protection both before and after any action is taken. This judicially recognized privilege of protection against disclosure in litigation or elsewhere is intended to assure that these resources will be fully and readily available to those officials upon whom the responsibility rests to take official and final Corporation action. However, the action itself, any memoranda made part of that action, and the facts on which it is based are not within this protection. The other purpose is to protect against the premature disclosure of material that is in the development stage if premature disclosure would be detrimental to the authorized and appropriate purposes for which the material is being used, or if, because of its tentative nature, the material is likely to be revised or modified before it is officially presented to the public.

(c) Examples of records covered by this section include minutes to the extent they contain matter described in paragraph (a) of this section; staff papers containing advice, opinions, suggestions, or exchanges of views, preliminary to final agency decision or action; budgetary planning and programming information; advance information on such things as proposed plans to procure, lease, or otherwise hire and dispose of materials, real estate, or facilities, documents exchanged preparatory to anticipated legal proceedings; material intended for public release at a specified future time, if premature disclosure would be detrimental to orderly processes of the Corporation; records of inspection, investigations, and surveys pertaining to internal management of the Department; and matters that would not be routinely disclosed under disclosure procedures in litigation and which are likely to be the subject of litigation. However, if such a record also contains factual information, that information must be made available under Subpart E of this part unless the facts are so inextricably intertwined with deliverative or policymaking processes, that they cannot be separated without disclosing those processes.

§ 902.56 Protection of personal privacy.

(a) Any of the following personnel, medical, or similar records is within the statutory exemption if its disclosure would harm the individual concerned or be a clearly unwarranted invasion of his personal privacy:

(1) Personnel and background records personal to any officer or employee of the Corporation, or other person, including his home address;

(2) Medical histories and medical records concerning individuals, including applicants for licenses; or

(3) Any other detailed record containing personal information identifiable with a particular person.

(b) The purpose of this section is to provide a proper balance between the protection of personal privacy and the preservation of the public's rights to Corporation information by authorizing the protection of information that, if released, might unjustifiably invade an individual's personal privacy.

§ 902.57 Investigatory files compiled for law enforcement purposes.

(a) Files compiled by the Corporation for law enforcement purposes, including the enforcement of the regulations of the Corporation, are within the statutory exemption to the extent that production of such records would:

(1) Interfere with enforcement proceedings;

(2) Deprive a person of a right to a fair trial or an impartial adjudication;

(3) Constitute an unwarranted invasion of personal privacy;

(4) Disclose the identity of a confidential source and in the case of a record compiled by a criminal law enforcement authority in the courts of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(5) Disclose investigative techniques and procedures; or,

(6) Endanger the life or physical safety of law enforcement personnel.

(b) The purpose of this section is to protect from disclosure the law enforcement files of the Corporation including files prepared in connection with related litigation and adjudicative proceedings. It includes the enforcement not only of criminal statutes but all kinds of laws.

§ 902.58 Reports of financial institutions.

Any material contained in or related to any examination, operating, or condition report prepared by, on behalf of, or for the use of, any agency responsible for the regulation or supervision of financial institutions is within the statutory exemption.

§ 902.59 Geological and geophysical information.

Any geological or geophysical information and data (including maps) concerning wells is within the statutory exemption.

Subpart G—Time Limitations

§ 902.60 Initial determination.

(a) An initial determination whether or not to release a record requested under Subparts D and E of this part shall be made by the Public Information Offices within 10 workdays after the receipt of a request which complies with § 902.21. Failure of the requester to comply with those provisions may toll the running of the 10 day period until the request is identified as one being made under the Act. This time limit may be extended by up to 10 workdays in accordance with § 902.62.

(b) Upon making initial determination, the Administrative Officer shall immediately notify the person making the request as to its disposition. If the determination is made to release the requested record, the Administrative Officer shall make the record promptly available. If the determination is to deny the release of the requested record, the Public Information Officer shall immediately notify the requester of the denial and shall provide the following information.

(1) The reason for the determination, including a reference to the appropriate exemption provided in Subpart F of this part;

(2) The right of the request or to appeal the determination as provided in Subpart H of this part; and

(3) The name and position of each person responsible for the denial of the request.

[41 FR 43143, Sept. 30, 1976, as amended at 48 FR 17354, Apr. 22, 1983]

§ 902.61 Final determination.

A determination with respect to any appeal made pursuant to Subpart H of this part will be made within twenty work days after the date of receipt of the appeal. The time limit provided may be extended by up to 10 workdays in accordance with § 902.62.

§ 902.62 Extension of time limits.

(a) In unusual circumstances, the time limits prescribed in §§ 902.60 and 902.61 may be extended by written notice to the person making the request. The notice shall set forth the reasons for the extension and the date on which a determination is expected to be dispatched. Under no circumstances shall the notice specify a date that would result in an extension for more than 10 workdays.

(b) As used in this section, "unusual circumstances" means (but only to the extent reasonably necessary to the proper processing of the particular request):

(1) The need to search for, collect and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request;

(2) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(c) Any person having made a request for records under this part shall have exhausted his administrative remedies with respect to such request, if the Corporation fails to comply with the applicable time limitations set forth in this subject.

Subpart H—Procedures for Administrative Appeal of Decisions Not To Disclose Records

§ 902.70 General.

Within the time limitations of Subpart G of this part, if the Administrative Officer makes a determination not to disclose a record requested under Subparts D and E of this part, he shall

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furnish a written statement of the reasons for that determination to the person making the request. The statement shall indicate the name(s) and title(s) of each person responsible for the denial of the request, and the availability of an appeal with the Corporation. Any person whose request for a record has been denied may submit a written appeal to the Corporation requesting reconsideration of the decision.

[41 FR 43143, Sept. 30, 1976, as amended at 48 FR 17354, Apr. 22, 1983]

§ 902.71 Forms for appeal.

Although no particular written form is prescribed for on appeal, the letter or similar written statement appealing a denial of a record shall contain a description of the record requested, the name and position of the official who denied the request, the reason(s) given for the denial, and other pertinent facts and statements deemed appropriate by the appellant. The Corporation may request additional details if the information submitted is insufficient to support an appeal.

§ 902.72 Time limitations on filing an appeal.

An appeal must be submitted in writing within thirty days from the date of receipt of the initial written denial and must contain the information requested in § 902.71.

§ 902.73 Where to appeal.

An appeal shall be addressed to the Chairman of the Board of Directors, Pennsylvania Avenue Development Corporation, 1331 Pennsylvania Avenue, NW, Suite 1220 North, Washington, DC 20004.

[41 FR 43143, Sept. 30, 1976, as amended at 50 FR 45824, Nov. 4, 1985]

§ 902.74 Agency decision.

(a) The Chairman shall have sole authority to act on an appeal, which seeks to reverse an initial decision denying disclosure of a record. He shall review each appeal and provide the appellant and other interested parties with a written notice of his decision. The decision of the Chairman as to the availability of the record is administratively final.

(b) If the decision of the Chairman sustains the refusal to disclose, the notice of decision shall set forth the reasons for the refusal, including the specific exemptions from disclosure under the Act that are the bases of the decision not to disclose. The notice shall further advise the appellant that judicial review is available on complaint to the appropriate District Court of the United States, as provided in section 552(a)(4)(B) of Title 5, United States Code.

(c) As set out in § 902.61, the final decision on appeal shall be made within 20 workdays after the receipt of the appeal. An extension of this limitation is authorized as prescribed under § 902.62.

Subpart I—Fees

§ 902.80 General.

(a) This subpart prescribes fees for services performed by the Corporation under Subparts D and E of this part. This subpart shall only apply to the services described herein. The fees for the service listed reflect the actual cost of the work involved in compiling requested record and copying, if necessary.

(b) A fee shall not be charged for time spent in resolving legal or policy issues.

[41 FR 43143, Sept. 30, 1976, as amended at 52 FR 26677, July 16, 1987]

§ 902.81 Payment of fees.

The fees prescribed in this part may be paid in cash or by check, draft, or postal money order made payable to the Pennsylvania Avenue Development Corporation.

[52 FR 26677, July 16, 1987]

§ 902.82 Fee schedule.

(a) *Definitions.* For purposes of this section—

(1) A "commercial use request" is a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the re-

quest is made. In determining whether a requester properly belongs in this category, the Corporation will determine the use to which the requester will put the records sought. Where the Corporation has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the Corporation will seek additional clarification before assigning the request to a specific category.

(2) "Direct costs" means those expenditures the Corporation actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) records to respond to an FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(3) "Duplication" means the process of making a copy of a record necessary to respond to an FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine-readable documentation (e.g., magnetic tape or disk), among others. The copy provided must be in a form that is reasonably usable by requesters.

(4) "Educational institution" means a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(5) "Non-commercial scientific institution" means an institution that is not operated on a "commercial" basis, within the meaning of paragraph (a)(1) of this section and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(6) "Representative of the new media" means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of new media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the Corporation may also look to the past publication record of a requester in making this determination.

(7) "Review" means the process of examining records located in response to a request that is for a commercial use (see paragraph (a)(1) of this section) to determine whether any portion of any record located is permitted to be withheld. It also includes processing any records for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) "Search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within records. A line-by-line search will not be conducted when merely duplicating an entire record would be the less expensive and quicker method of complying with the request. "Search" does not include "review" of material to determine whether the material is exempt from disclosure (see paragraph (a)(7) of this section). Searches may be

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done manually or by computer using existing programming.

(b) The following provisions shall apply with respect to services rendered to the public in processing requests for disclosure of the Corporation's records under this Part:

(1) *Fee for duplication of records:* $0.25 per page. When the Corporation estimates that duplication charges are likely to exceed $25.00, it will notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. The Corporation will offer the requester the opportunity to confer with the Corporation's staff in order to reformulate the request to meet the requester's needs at a lower cost.

(2) *Search and review fees.* (i) Searches for records by clerical personnel: $7.00 per hour, including the time spent searching for and copying any records.

(ii) Search for and review of records by professional and supervisory personnel: $11.50 per hour spent searching for any record or reviewing any record to determine whether it may be disclosed, including time spent in copying any record.

(iii) Except for requests seeking records for a commercial use, the Corporation will provide the first 100 pages of duplication and the first two hours of search time without charge. The word "pages" means paper copies of a standard size, either 8½" by 11" or 14" by 14".

(3) *Duplication of architectural drawings, maps, and similar materials:* (per copy) $10.00.

(4) *Reproduction of 35 mm slides:* (per copy) $1.00.

(5) *Reproduction of enlarged, black and white photographs:* (per copy) $10.00.

(6) *Reproduction of enlarged color photographs:* (per copy) $17.00.

(7) *Certification and validation fee:* $1.75 for each certification or validation of a copy of any record.

(8) *Categories of FOIA requesters and fees to be charged*—(i) *Commercial use requesters.* When the Corporation receives a request for records for commercial use, it will assess charges to recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Requesters must reasonably describe the records sought.

(ii) *Educational and non-commercial scientific institution requesters.* The Corporation shall provide copies of records to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. Requesters must reasonably describe the records sought.

(iii) *Requesters who are representatives of the news media.* The Corporation shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in the definition of "representative of the news media" in paragraph (a)(6) of this section, and his or her request must not be made for a commercial use. In reference to this class of requester, a request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. Requestors must reasonably describe the records sought.

(iv) *All other requesters.* The Corporation will charge requesters who do not fit into any of the categories above fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Requests from record subjects for records about themselves filed in the Corporation's systems of records will be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for reproduction. Requesters must reasonably describe the records sought.

(9) *Interest.* In the event a requester fails to remit payment of fees charged for processing a request under this part within 30 days from the date such fees were billed, interest on such fees may be assessed beginning on the 31st day after the billing date at the rate prescribed in section 3717 of Title 31, U.S.C., and will accrue from the date of the billing.

(10) *Unsuccessful searches.* Except as provided in paragraph (b)(8)(iv) of this section, the cost of searching for a requested record shall be charged even if the search fails to locate such record or it is determined that the record is exempt from disclosure.

(11) *Aggregating requests.* A requester must not file multiple requests at the same time, each seeking portions of a record or records, solely in order to avoid payment of fees. When the Corporation reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Corporation may aggregate any such requests and charge accordingly.

(12) *Advance payments.* The Corporation will not require a requester to make an advance payment, i.e., payment before work is commenced or continued on a request unless:

(i) The Corporation estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250; or

(ii) If a requester has previously failed to make timely payments (i.e., within 30 days of billing date) of fees charged under this part, the requester may be required to pay the full amount owed plus any applicable interest accrued thereon or demonstrate that he has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before the Corporation begins to process a new request or a pending request from this requester.

(iii) With regard to any request coming within paragraphs (b)(12) (i) and (ii) of this section, the administrative time limits set forth in §§ 902.60, 902.61, and 902.62 of this part will begin to run only after the Corporation has received the requisite fee payments.

(iv) *Non-payment.* In the event of nonpayment of billed charges for disclosure of records, the provisions of the Debt Collection Act of 1982 (Pub. L. 97-365), including disclosure to consumer credit reporting agencies and referral to collection agencies, where appropriate, may be utilized to obtain payment.

[52 FR 26677, July 16, 1987]

§ 902.83 Waiver or reduction of fees.

Fees otherwise chargeable in connection with a request for disclosure of a record shall be waived or reduced where:

(a) Disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester; or

(b) The costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee.

[52 FR 26679, July 16, 1987]

PART 903—PRIVACY ACT

Sec.

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AUTHORITY: 5 U.S.C. 552a; 40 U.S.C. 870.

SOURCE: 42 FR 5973, Feb. 1, 1977, unless otherwise noted.

§ 903.1 Purpose and scope.

The purpose of this part is to enable the Pennsylvania Avenue Development Corporation to implement the Privacy Act of 1974, and in particular the provisions of 5 U.S.C. 552a, as added by the Act. The Act was designed to insure that personal information about individuals collected by Federal agencies be limited to that which is legally authorized and necessary, and that the information is maintained in a manner which precludes unwarranted intrusions upon individual privacy. The regulations in this part establish, and make public, procedures whereby an individual can: (a) Request notification of whether or not the Corporation maintains or has disclosed a record pertaining to him or her, (b) request access to such a record or an accounting of its disclosure, (c) request that the record be amended, and (d) appeal any initial adverse determination of a request to amend a record.

§ 903.2 Definitions.

As used in this part:

(a) "Agency" means agency as defined in 5 U.S.C. 552(e).

(b) "Corporation" means the Pennsylvania Avenue Development Corporation.

(c) "Workday" shall be a day excluding a Saturday, Sunday or legal holiday.

(d) "Individual" means a citizen of the United States or an alien lawfully admitted for permanent residence.

(e) "Maintain" includes maintain, collect, use, or disseminate.

(f) "Record" means any items, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his or her education, financial transactions, medical history, and criminal or employment history and that contains his or her name, or the identifying number, symbol or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

(g) The term "system of records" means a group of records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(h) The term "statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual except as provided by section 8 of Title 13, United States Code.

(i) The term "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

§ 903.3 Procedures for notification of records pertaining to individuals.

(a) An individual making a written or oral request under the Privacy Act (5 U.S.C. 522a) shall be informed of any Corporation systems of records which pertain to the individual, if the request contains a reasonable identification of the appropriate systems of records as described in the notice published in the FEDERAL REGISTER.

(b) Requests may be made in person between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday, (except legal holidays). The request should be addressed to the Privacy Protection Officer, Pennsylvania Avenue Development Corporation, 1331 Pennsylvania Avenue, NW, Suite 1220 North, Washington, DC 20004. The Privacy Protection Officer of the Corporation will require adequate personal identification before processing the request. If a request is made in writing it must be under the signature of the requesting individual and include the individual's address, date of birth, and an additional proof of identification, such as a photocopy of a driver's license or similar document bearing the individual's signature. A notarized, signed statement is acceptable to verify the identity of the individual involved without additional proof.

[42 FR 5973, Feb. 1, 1977, as amended at 50 FR 45824, Nov. 4, 1985]

§ 903.4 Requests for access to records.

(a) Except as otherwise provided by law or regulation, an individual, upon request made in person or delivered in writing may gain access to his or her record or to any information pertaining to him or her which is contained in a system of records maintained by the Corporation, and to review the record and have a copy made of all or any portion thereof in a form comprehensible to him or her. An individual seeking access to a Corporation record may be accompanied by a person of his or her choosing. However, the Corporation will require a written statement from the individual authorizing discussion of his or her record in the accompanying person's presence.

(b) A request under paragraph (a) of this section shall be directed to the Privacy Protection Officer at the place, times and in the manner prescribed in § 903.3 (a) and (b). The request should include the following information: (1) The name of the individual; (2) if made in writing, the information required under § 903.3(b); (3) a description of system or systems of records which contain the record to which access is requested; (4) the approximate dates covered by the record; and, (5) a suggested date and time when the individual would like to view the record.

(c) Requests which do not contain information sufficient to identify the record requested will be returned promptly to the requester, with a notice indicating that information is lacking. Individuals making requests in person will be informed of any deficiency in the specification of records or identification at the time that the request is made. The Privacy Protection Officer of the Corporation will require adequate personal identification before processing a request made in person.

§ 903.5 Response to request for access.

(a) Within 10 days of receipt of a request made under § 903.4 the Privacy Protection Officer shall determine whether access to the record is available under the Privacy Act and shall notify the requesting individual in person or in writing of that determination.

(b) Notices granting access shall inform the individual when and where the requested record may be seen, how copies may be obtained, and of any anticipated fees or charges which may be incurred under § 903.11. Access shall be provided within 30 days of receipt of the request unless the Corporation, for good cause shown, is unable to provide prompt access, in which case the individual shall be informed in writing within the 30 days as to the cause for delay and when it is anticipated that access will be granted.

(c) Notices denying access shall state the reasons for the denial, and advise the individual that the decision may be appealed in accordance with the procedures set forth in § 903.6.

§ 903.6 Appeal of initial denial of access.

(a) After receiving notification of an initial denial of access to a record, an individual may request a review and reconsideration of the request by the Executive Director of the Corporation, or an officer of the Corporation designated by him, but other than the Privacy Protection Officer. Appeals for review shall be in writing, addressed to the Executive Director, Pennsylvania Avenue Development Corporation, 1331 Pennsylvania Avenue, NW, Suite 1220 North, Washington, DC 20004. The appeal shall identify the record as in the original request, shall indicate the date of the original request and the date of the initial denial, and shall indicate the expressed basis for the denial.

(b) Not later than 30 days after receipt of an appeal, the Executive Director, or an officer of the Corporation designated by him, will complete review of the appeal and the initial denial and either:

(1) Determine that the appeal should be granted, and notify the individual in writing to that effect; or,

(2) Determine that the appeal should be denied because the information requested is exempt from disclosure. If the reviewing official denies the appeal, he or she shall advise the individual in writing of the decision and the reasons for reaching it, and that the denial of the appeal is a final agency action entitling the individual to seek judicial review in the appropriate district court of the United States as provided in 5 U.S.C. 552a(g).

[42 FR 5973, Feb. 1, 1977, as amended at 50 FR 45824, Nov. 4, 1985]

§ 903.7 Requests for amendment of record.

(a) An individual may request amendment of a Corporation record pertaining to him or to her, if the individual believes that the record contains information which is not accurate, relevant, timely, or complete. The request shall be in writing, whether presented in person or by mail, shall state with specificity the record sought to be amended, and shall propose wording of the correction or amendment sought. The request shall be directed to the Privacy Protection Officer at the place, times, and in the manner specified in § 903.3 (a) and (b). Assistance in preparing a request to amend a record, or to appeal an initial adverse determination under § 903.3(a), may be obtained from the Privacy Officer, Pennsylvania Avenue Development Corporation, 1331 Pennsylvania Avenue, NW, Suite 1220 North, Washington, DC 20004.

(b) Not later than 10 days after the date of receipt of a request the Privacy Protection Officer will acknowledge it in writing. The acknowledgement will clearly describe the request, and if a determination has not already been made, will advise the individual when he or she may expect to be advised of action taken on the request. For requests presented in person, written acknowledgement will be provided at the time when the request is presented. No separate acknowledgement of receipt will be issued if the request can be reviewed and the individual advised of the results of the review within the 10 day period.

[42 FR 5973, Feb. 1, 1977, as amended at 50 FR 45824, Nov. 4, 1985]

§ 903.8 Review of request for amendment of record.

(a) Upon receipt of a request for amendment of a record the Privacy Protection Officer will promptly review the record and: Either (1) Amend any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or (2) inform the individual of refusal to amend the record in accordance with the request. In reviewing a record pursuant to a request to amend it, the Corporation will assess the accuracy, relevance, timeliness and completeness of the record in terms of the criteria established in 5 U.S.C. 522a(e)(5). In reviewing a record in response to a request to amend it by deleting information, the Corporation will ascertain whether or not the information is relevant and necessary to accomplish a purpose of the Corporation required to be accomplished by statute or by executive order of the President, as prescribed by 5 U.S.C. 522a(e)(1).

(b) The Corporation shall take the action specified in paragraph (a) of this section within 30 days of receipt of a request for amendment of a record, unless unusual circumstances preclude completion of the action within that time. If the expected completion date for the action, as indicated in the acknowledgement provided pursuant to § 903.5 cannot be met, the individual shall be advised of the delay and of a revised date when action is expected to be completed. If necessary for an accurate review of the record, the Corporation will seek, and the individual will supply, additional information in support of his or her request for amending the record.

(c) If the Corporation agrees with all or any portion of an individual's request to amend a record, the Corporation will so advise the individual in writing, and amend the record to the extent agreed to by the Corporation. Where an accounting of disclosures has been kept, the Corporation will advise all previous recipients of the record of the fact that the amendment was made and the substance of the amendment.

(d) If the Corporation disagrees with all or any portion of an individual's request to amend a record, the Corporation shall: (1) Advise the individual of its adverse determination and the reasons therefor, including the criteria used by the Corporation in conducting the review; (2) inform the individual that he or she may request a review of the adverse determination by the Executive Director of the Corporation, or by an officer of the Corporation designated by the Executive Director; and, (3) advise the individual of the procedures for requesting such a review including the name and address of the official to whom the request should be directed.

(e) If the Corporation is apprised by another agency of any corrections or other amendments made to a record contained in the Corporation's system of records, the Corporation will promptly amend its record and advise in writing all previous recipients of the record of the fact that the amendment was made and the substance of the amendment.

§ 903.9 Appeal of initial adverse determination of request for amendment of record.

(a) After receipt by an individual of notice of an adverse determination by the Privacy Protection Officer concerning a request to amend a record, the individual may, within 60 working days after the date of receipt of the notice, appeal the determination by seeking a review by the Executive Director of the Corporation, or by an officer of the Corporation designated by him. The appeal shall be in writing, mailed or delivered to the Executive Director, Pennsylvania Avenue Development Corporation, 1331 Pennsylvania Avenue, NW, Suite 1220 North, Washington, DC 20004. The appeal shall identify the record in the same manner as it was identified in the original request, shall indicate the dates of the original request and of the adverse determination and shall indicate the expressed basis for that determination. In addition, the appeal shall state briefly the reasons why the adverse determination should be reversed.

(b) Not later than 30 days after receipt of an appeal, the Executive Director, or an officer of the Corporation designated by him, will complete a review of the appeal and the initial determination, and either: (1) Determine that the appeal should be granted, take the appropriate action with respect to the record in question, and notify the individual accordingly; or, (2) determine that the appeal should be denied.

(c) The reviewing official may, at his or her option, request from the individual such additional information as is deemed necessary to properly conduct the review. If additional time is required, the Executive Director may, for good cause shown, extend the period for action beyond the 30 days specified above. The individual will then be informed in writing of the delay and the reasons therefor, and of the approximate date on which action is expected to be completed.

(d) If the reviewing official denies the appeal, he or she shall advise the individual in writing: (1) Of the decision and the reasons for reaching it; (2) that the denial of the appeal is a final agency action entitling the individual to seek judicial review in the appropriate district court of the United States, as provided in 5 U.S.C. 552a(g); and, (3) that the individual may file with the Corporation a concise statement setting forth the reasons for his or her disagreement with the refusal of the Corporation to amend the record in question.

(e) Any individual having received notices of a denial of an appeal to amend a record may file a statement of disagreement with the Executive Director not later than 60 working days from the date of receipt of the notice. Such statements shall ordinarily not exceed one page in length, and the Corporation reserves the right to reject statements of excessive length. Upon receipt of a proper and timely statement of disagreement, the Corporation will clearly annotate the record in question to indicate the portion of the record which is in dispute. In any subsequent disclosure containing information about which the individual has filed a statement of disagreement, the Corporation will provide a copy of the statement together with the record to which it pertains. In addition, prior recipients of the disputed record will be provided with a copy of statements of disagreement to the extent that an accounting of disclosures was maintained. If the Corporation deems it apropriate, it may also include in any disclosure its own concise statement of the reasons for not making the amendments requested.

[42 FR 5973, Feb. 1, 1977, as amended at 50 FR 45824, Nov. 4, 1985]

§ 903.10 Disclosure of records to persons or agencies.

(a) The Corporation will not disclose any record which is contained in a system of records, by any means of communication to any person or to another agency except: (1) Pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains; (2) to those officers and employees of the Corporation who have a need for the record in the performance of their duties; (3) when required under 5 U.S.C. 522 (The Freedom of Information Act); or (4) pursuant to the conditions of disclosure contained in 5 U.S.C. 552a(b)(3) through 5 U.S.C. 522a(b)(11).

(b) The Privacy Protection Officer of the Corporation shall keep an accounting of each disclosure made pursuant to paragraph (a)(4) of this section, in accordance with 5 U.S.C. 552a(c). Except for disclosures made pursuant to 5 U.S.C. 552a(b)(7), the Privacy Protection Officer shall make the accounting kept under this paragraph available to an individual to whom the record pertains, upon his or her request. An individual requesting an accounting of disclosures should do so at the place, times and in the manner specified in § 903.3 (a) and (b).

§ 903.11 Routine uses of records maintained in the system of records.

(a) It shall be a routine use of the records in this system of records to disclose them to the Department of Justice when:

(1) The Corporation, or any component thereof; or

(2) Any employee of the Corporation in his or her official capacity; or

(3) Any employee of the Corporation in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(4) The United States, where the Corporation determines that litigation is likely to affect the Corporation or any of its components, is a party to litigation or an interest in such litigation, and the use of such records by the Department of Justice is deemed by the Corporation to be relevant and necessary to the litigation, provided, however, that in each case, the Corporation determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

(b) It shall be a routine use of records maintained by the Corporation to disclose them in a proceeding before a court or adjudicative body before which the Corporation is authorized to appear, when:

(1) The Corporation, or any component thereof; or

(2) Any employee of the Corporation is his or her individual capacity;

(3) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(4) The United States, where the Corporation determines that litigation is likely to affect the Corporation or any of its components is a party to litigation or has an interest in such litigation and the Corporation determines that use of such records is relevant and necessary to the litigation, provided, however, that, in each case, the Corporation determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

[52 FR 34384, Sept. 11, 1987; 52 FR 39224, Oct. 21, 1987]

§ 903.12 Fees for furnishing and reproducing records.

(a) Individuals will not be charged a fee for:

(1) The search and review of the record;

(2) Any copies of the record produced as a necessary part of the process of making the record available for access;

(3) Any copies of the requested record when it has been determined that access can only be accomplished by providing a copy of the record through the mail. The Privacy Protection Officer may provide additional copies of any record without charge when it is determined that it is in the interest of the Government to do so.

(b) Except as provided in paragraph (a) of this section, fees will be charged for the duplication of records at a rate of 10¢ per page. If it is anticipated that the total fee chargeable to an individual under this subpart will exceed $25, the Corporation shall promptly notify the requester of the anticipated cost. An advance deposit equal to 50% of the anticipated total fee will be required unless waived by the Privacy Protection Officer. In notifying the requester of the anticipated fee, the Privacy Protection Officer shall extend an offer to the requester to consult so that the request might be reformulated in a manner which will reduce the fee, yet still meet the needs of the requester.

(c) Fees must be paid in full prior to delivery of the requested copies. Remittances may be in the form of cash, personal check, bank draft or a postal money order. Remittances, other than cash shall be made payable to the Treasurer of the United States.

[42 FR 5973, Feb. 1, 1977. Redesignated at 52 FR 34384, Sept. 11, 1987; 52 FR 39224, Oct. 21, 1987]

§ 903.13 Penalties.

The provision of 5 U.S.C. 552a(i), as added by section 3 of the Privacy Act, make it a misdemeanor subject to a maximum fine of $5,000, to knowingly and willfully request or obtain any record concerning an individual from an agency under false pretenses. Similar penalties attach for violations by agency officers and employees of the Privacy Act or regulations established thereunder.

[42 FR 5973, Feb. 1, 1977. Redesignated at 52 FR 34384, Sept. 11, 1987; 52 FR 39224, Oct. 21, 1987]

PART 904—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

AUTHORITY: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100-17, 101 Stat. 246-256 (42 U.S.C. 4601 note).

§ 904.1 Uniform relocation assistance and real property acquisition.

Regulations and procedures for complying with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646, 84 Stat. 1894, 42 U.S.C. 4601), as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100-17, 101 Stat. 246-255, 42 U.S.C. 4601 note) are set forth in 49 CFR Part 24.

[52 FR 48022, Dec. 17, 1987 and 54 FR 8912, Mar. 2, 1989]

PART 905—STANDARDS OF CONDUCT

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AUTHORITY: 40 U.S.C. 875, unless otherwise noted.

SOURCE: 43 FR 60902, Dec. 29, 1978, unless otherwise noted.

Subpart A—General Provisions

§ 905.735-101 Principles and purpose.

In order to assure that the business of the Pennsylvania Avenue Development Corporation is conducted effectively, objectively, and without improper influence or appearance thereof, all employees and special Government employees must observe unquestionable standards of integrity and conduct. Employees and special Government employees shall not engage in criminal, infamous, dishonest, immoral, or disgraceful conduct or other conduct prejudicial to the Government. All employees and special Government employees must avoid conflicts of private interest with their public duties and responsibilities. They must consider the propriety of any action in relation to general ethical standards of the highest order, so that public confidence in the integrity of the Government will not be impaired. Certain standards are set by law. Others are set by regulation and by policy. This part incorporates by reference applicable general standards of conduct and prescribes additional necessary elements. Taken together, this part constitutes the Corporation's regulations on this subject. Failure to observe any of the regulations in this part is cause for remedial action.

§ 905.735-102 Adoption of regulations.

Under the authority of 5 CFR 735.104(f), the Corporation adopts the following sections of the Civil Service Commission regulations on "Employee Responsibilities and Conduct" found in Part 735 of Title 5, Code of Federal Regulations: §§ 735.202 (a), (d), (e), (f) through 735.210; 735.302; 735.303(a); 735.304; 735.305(a); 735.306; 735.404 through 735.411; and 735.412 (b) and (d).

[43 FR 60902, Dec. 29, 1978, as amended at 45 FR 15927, Mar. 12, 1980]

§ 905.735-103 Definitions.

As used in this part:

(a) "Board Member" means any member of the Board of Directors of the Pennsylvania Avenue Development Corporation, appointed or serving under section 3, Pub. L. 92-578, 86 Stat. 1267 (40 U.S.C. 872).

(b) "Chairman" means the Chairman of the Board of Directors and President of the Corporation.

(c) "Conflict" means the subordination of public responsibilities to private interests, and includes the appearance of such subordination.

(d) "Consultant" means an individual who serves as an advisor to an officer or division of the Corporation, as distinguished from an officer or employee who carries out the agency's duties and responsibilities. He gives his views or opinions on problems or questions presented him by the Corporation, but he neither performs nor supervises performance of operating functions. Ordinarily, he is expert in the field in which he advises, but he need not be a specialist. His expertness may lie in his possession of a high order of broad administrative, professional, or technical experience indicating that his ability and knowledge make his advice distinctively valuable to the agency. (Chapter 304, Federal Personnel Manual).

(e) "Corporation" means the Pennsylvania Avenue Development Corporation, created by the Pennsylvania Avenue Development Corporation Act of 1972, Pub. L. 92-578, 86 Stat. 1266 (40 U.S.C. 871).

(f) "Employee" means an officer or employee of the Corporation, but does not include a special Government employee as defined herein. The term includes those Board Members who are determined to be officers or employees of the executive or legislative branches of the United States or of the District of Columbia. The term does not include elected officials.

(g) "Executive order" means Executive Order 11222 of May 8, 1965.

(h) "Expert" means a person with excellent qualifications and a high degree of attainment in a professional, scientific, technical, or other field. His knowledge and mastery of the principles, practices, problems, methods, and techniques of his field of activity, or of a specialized area in the field, are clearly superior to those usually possessed by ordinarily competent individuals in that activity. His attainment is such that he usually is regarded as an authority or as a practitioner of unusual competence and skill by other persons in the profession, occupation, or activity. (Chapter 304, Federal Personnel Manual.)

(i) "Head of the agency" means the Chairman.

(j) "Person" means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other institution or organization.

(k) "Special Government Employee" means an officer or employee of the Corporation who is retained, designated, appointed or employed to perform, with or without compensation, for not more than 130 days during any period of 365 consecutive days, temporary duties either on a full time or intermittent basis (18 U.S.C. 202(a)). The term includes those Board Members who are appointed from private life and required to file a statement of financial interests with the Chairman of the Civil Service Commission pursuant to Part IV of the Executive order, or who are determined to be special government employees of the executive or legislative branches of the United States or the District of Columbia.

§ 905.735–104 Applicability.

This part applies to each employee and to each special Government employee of the Corporation as defined herein and supplements the Executive order and Part 735 of Title 5, Code of Federal Regulations, promulgated by the Civil Service Commission on employee responsibilities and conduct.

§ 905.735–105 Designation of counselor.

In accordance with 5 CFR 735.105(a), the General Counsel of the Corporation is designated to be Ethics Counselor and shall serve as the Corporation's liaison with the Civil Service Commission for matters covered in this part.

§ 905.735–106 Notification to employees and special Government employees.

(a) At the time these regulations are published, or amended, and not less often than once annually thereafter, the Corporation shall furnish each employee and special Government employees with a copy of the regulations. The Administrative Officer shall insure that each newly hired employee and special Government employee is given a copy of these regulations prior to or at the time of entry on duty.

(b) All employees and special Government employees will be advised by the Corporation of the availability of counseling regarding the provisions of this part.

§ 905.735–107 Review of statements of employment and financial interests.

The Ethics Counselor of the Corporation shall review each statement of employment and financial interests submitted under § 905.735–402 or § 905.735–403, except his own and those statements of special Government employees who file with the Chairman of the Civil Service Commission. When review discloses a conflict between the interests of an employee or special Government employee of the Corporation and the performance of his services for the Corporation, the Ethics Counselor shall bring the conflict to the attention of the employee or special Government employee, grant the individual an opportunity to explain the conflict, and attempt to resolve it. If the conflict cannot be resolved, the Ethics Counselor shall forward a written report on the conflict to the Chairman, recommending appropriate action. The Chairman shall review the report, solicit an explanation from the individual, and seek resolution of the conflict.

§ 905.735-108 Remedial and disciplinary action.

(a) In addition to any penalties prescribed by law, the Chairman, after review and consideration of any explanation given by an employee or special Government employee concerning a conflict of interest, may institute appropriate remedial action to resolve or otherwise eliminate the conflict. Appropriate remedial action may include, but is not limited to:

(1) Divestment by the employee or the special Government employee of the conflicting interest;

(2) Disqualification of the individual from a particular assignment;

(3) Changes in the assigned duties of the individual; or

(4) Disciplinary action.

(b) Where the situation warrants some form of disciplinary action, the Chairman may choose from a wide range including a warning or reprimand, suspension, reduction in grade or pay, or termination of employment. The disciplinary action selected should reflect the character and degree of the offense which demands such action and should be reasonable in light of that offense.

(c) Remedial action, whether disciplinary or otherwise, shall be effected in accordance with applicable laws, Executive orders, and regulations.

Subpart B—Conduct and Responsibilities of Employees

§ 905.735-201 General standards of conduct.

(a) All employees shall conduct themselves on the job so as to efficiently discharge the work of the Corporation. Courtesy, consideration, and promptness are to be observed in dealing with the public, Congress, and other governmental agencies.

(b) All employees shall conduct themselves off the job so as not to reflect adversely upon the Corporation or the Federal service.

(c) Employee conduct shall exemplify the highest standards of integrity. Employees shall avoid any action, whether or not specifically prohibited by this part, which might result in, or create the appearance of:

(1) Using public office for private gain;

(2) Giving preferential treatment to any person;

(3) Impeding Government efficiency or economy;

(4) Losing complete independence or impartiality;

(5) Making a Government decision outside official channels; or

(6) Affecting adversely the confidence of the public in the integrity of the Government.

§ 905.735-202 Gifts, entertainment, and favors.

Pursuant to paragraph (b) of 5 CFR 735.202, the following exceptions to the restriction of paragraph (a) of that section are authorized. Employees may:

(a) Accept gifts and other things of value under circumstances which arise from an obvious family or personal relationship(s) (such as between the parents, children, or spouse of the employee and the employee), when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors;

(b) Accept food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon, dinner, or other meeting, or on an inspection tour where an employee may properly be in attendance;

(c) Accept loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home purchase;

(d) Accept unsolicited advertising or promotional materials, such as pens, pencils, note pads, calendars and other items of nominal intrinsic value;

(e) Participating without payment in privately funded activities in the Washington metropolitan area if: (1) An invitation is addressed to the Chairman or Executive Director of the Corporation and approved by either of them; (2) no provision for individual payment is readily available; and (3) the activities are limited to ceremonies of interest to both the local community and the Corporation (such as ground breakings or openings), or are sponsored or encouraged by the Federal or District Government as a matter of policy; and,

(f) Participate in widely attended lunches, dinners, and similar gatherings sponsored by industrial, commercial, technical and professional associations, or groups, for discussion of matters of interest both to the Corporation and the public. Participation by an employee at the host's expense is appropriate if the host is an association or group and not an individual.

§ 905.735-203 Outside employment and other activity.

As provided in 5 CFR 735.203, an employee of the Corporation may engage in outside employment or other outside activity not incompatible with the full and proper discharge of the duties and responsibilities of his Government employment. An employee who proposes to engage in outside employment shall report that fact in writing to his supervisor prior to undertaking such employment.

§ 905.735-204 Disclosure of information.

(a) Every employee who is involved in the development, maintenance or use of Corporation records containing information about individuals shall familiarize himself with the requirements and penalties of the Privacy Act of 1974 (5 U.S.C. 552a) and Corporation regulations (36 CFR Part 903) promulgated thereunder concerning the utilization of and access to such records.

(b) Every employee is directed to cooperate to the fullest extent possible in discharging the requirement of the Freedom of Information Act (5 U.S.C. 522) and Corporation regulations promulgated thereunder (36 CFR Part 902). Every effort should be made to furnish service with reasonable promptness to persons who seek access to Corporation records and information.

§ 905.735-205 Purchase of Government-owned property.

Employees of the Corporation and members of their immediate families may purchase Government-owned personal property when it is offered for sale by the General Services Administration or any Federal agency other than the Corporation (41 CFR 101-45.302).

Subpart C—Conduct and Responsibilities of Special Government Employees

§ 905.735-301 General standards of conduct.

(a) Special Government employees of the Corporation shall adhere to applicable regulations adopted under § 904.735-102, except 5 CFR 735.203(b). In addition, the standards of conduct set forth in §§ 905.735-201, 204, and 205 shall apply to special Government employees.

(b) Special Government employees of the Corporation may teach, lecture, or write consistent with the provisions of 5 CFR 735.203(c).

(c) Pursuant to 5 CFR 735.305(b), the provisions concerning gifts, entertainment, and favors set forth in § 905.735-202 are hereby made applicable to special Government employees.

Subpart D—Special Standards Applicable to Certain Board Members

§ 905.735-401 Standards.

Section 3(c)(8) of the Pennsylvania Avenue Development Corporation Act of 1972, Pub. L. 92-578, 86 Stat. 1267 (40 U.S.C. 872(c)(8)) specifies that the eight members appointed to the Board by the President from private life, at least four of whom shall be residents of the District of Columbia, "shall have knowledge and experience in one or more fields of history, architecture, city planning, retailing, real estate, construction or government." As a result of these prerequisites for appointment of a private member to the Board of Directors, conflicts could arise for these Board Members as the Corporation proceeds with various development activities. Accordingly, Board Members should perform their responsibilities for the operation and management of the Corporation consistent with these regulations, and other applicable Federal laws and regulations, and consistent with the highest level of fiduciary responsibility.

§ 905.735-402 Advice and determination.

The Corporation's Ethics Counselor is readily available for consultation when a Board Member seeks advice as to the appropriateness of his actions in light of this part, the Executive order, or Title 18, United States Code, Chapter 11. A Board Member has an affirmative duty to advise the Ethics Counselor of any potential conflict of interest which may arise with the individual's participation in any particular matter before the Corporation. If advised to do so, the Board Member should submit to the Chairman for determination the question of whether or not the conflict will disqualify the Board Member from participating in the action to be taken by the Corporation. Under the authority delegated to the Chairman pursuant to 18 U.S.C. 208(b), the Chairman may find that the Board Member need not be disqualified from participating in the particular matter, if: (a) The Board Member makes a full disclosure of the financial interest; and (b) the Chairman furnishes him with a written determination in advance of the action that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from the Board Member. Requests for similar determinations for conflicts posed by the financial interests of the Chairman himself shall be submitted to the Chairman of the Civil Service Commission.

Subpart E—Statements of Employment and Financial Interests

§ 905.735-501 Form and content of statements.

Statements of employment and financial interests required to be submitted under this subpart by employees and special Government employees shall contain the information required in the formats prescribed by the Civil Service Commission in the Federal Personnel Manual.

§ 905.735-502 Statements of employment and financial interests by employees.

(a) Employees of the Corporation in the following named positions shall prepare and submit statements of employment and financial interests:

(1) Executive Director;

(2) Assistant Director Legal—General Counsel;

(3) Assistant Director/Finance;

(4) Development Director;

(5) Secretary of the Corporation Administrative Officer;

(6) Construction Manager;

(7) Senior Architect/Planner;

(8) Chief, Real Estate Operations;

(9) Any Contracting Officer of the Corporation; and

(10) Any employee classified as a GS-13 or above whose duties and responsibilities are such that the ethics counselor determines a statement should be filed.

(b) Each statement of employment and financial interests required by this section, except that of the General Counsel, shall be submitted to the Ethics Counselor, Office of the General Counsel, Pennsylvania Avenue Development Corporation, 1331 Pennsylvania Avenue, NW, Suite 1220 North, Washington, DC 20004. The General Counsel, as Ethics Counselor, shall submit his statement directly to the Chairman for review.

(c) An employee who believes that his position has been improperly included in this section as one requiring the submission of a statement of employment and financial interests may obtain a review of this determination upon a written request to the Chairman.

[43 FR 60902, Dec. 29, 1978, as amended at 50 FR 45824, Nov. 4, 1985]

§ 905.725-503 Statements of employment and financial interests by special Government employees.

All special Government employees shall submit a statement of employment and financial interest prior to beginning employment or service with the Corporation. Each statement shall be submitted to the Ethics Counselor, Office of the General Counsel, Pennsylvania Avenue Development Corporation, 1331 Pennsylvania Avenue, NW., Suite 1220 North, Washington, D.C. 20004, except that the statements of Board Members appointed from private life shall be filed with the U.S. Civil Service Commission.

[43 FR 60902, Dec. 29, 1978, as amended at 50 FR 45824, Nov. 4, 1985]

§ 905.735-504 Procedures for obtaining statements.

(a) Upon the adopting of the regulations of this part, the Ethics Counselor shall deliver to the incumbent of each position named in § 905.735-402 and to each special Government employee, two copies of the appropriate form for filing a statement of employment and financial interests. An enclosure with the forms shall advise that:

(1) The original of the completed form must be returned in a sealed envelope, marked "Personal—In Confidence," to the Ethics Counselor within the time specified by the Ethics Counselor;

(2) The services of the ethics counselor are available to advise and assist in preparation of the statement;

(3) Any additions or deletions to the information furnished must be reported in a supplementary statement at the end of the calendar quarter in which the change occurs; or in the case of a special Government employee, at the time the change occurs; and

(4) No later than June 30 of each year, all special Government employees and employees required to file under § 905.735-402(a) shall file an annual supplementary statement to update the information previously filed.

(b) The Administrative Officer shall be responsible for assuring that a completed statement of employment and financial interests is obtained from each special Government employee prior to the beginning of employment or service with the Corporation. The Administrative Officer shall promptly forward the statements to the Ethics Counselor for review.

§ 905.735-505 Confidentiality of statements.

The Ethics Counselor shall hold in confidence each statement of employment and financial interests, and each supplementary statement within his control. Access to or disclosure of information contained in these statements shall not be allowed, except as the Commission or the Ethics Counselor determine for good cause shown, consistent with the Privacy Act of 1974 (5 U.S.C. 552a), and the regulations and pertinent notices of systems of records prepared by the Civil Service Commission and the Corporation in accordance with that Act.

Subpart F—Conduct and Responsibilities of Former Employees—Enforcement

Authority: 18 U.S.C. 207(j); sec. 6(5), Pub. L. 92-578, 86 Stat. 1270 (40 U.S.C. 875(5)).

Source: 49 FR 38233, Aug. 23, 1984, unless otherwise noted.

§ 905.737-101 Applicable provisions of law.

Former employees of the Corporation must abide by the provisions of 18 U.S.C. 207 and 5 CFR 737.1 through 737.25, which bar certain acts by former Government employees that may reasonably give the appearance of making unfair use of prior Government employment and affiliations. Violation of those provisions will give rise to Corporation enforcement proceedings as provided in § 905.737-102, and may also result in criminal sanctions, as provided in 18 U.S.C. 207.

§ 905.737-102 Enforcement proceedings.

(a) *Delegation.* The Chairman of the Corporation may delegate his or her authority under this subpart.

(b) *Initiation of disciplinary hearing.* (1) Information regarding a possible violation of 18 U.S.C. 207 or 5 CFR Part 737 should be communicated to the Chairman. The Chairman shall promptly initiate an investigation to determine whether there is reasonable cause to believe that a violation has occurred.

(2) On receipt of information regarding a possible violation of 18 U.S.C. 207, and after determining that such information appears substantiated, the Chairman of the Corporation shall expeditiously provide such information, along with any comments or regulations of the Corporation, to the Director of the Office of Government Ethics and to the Criminal Division, Department of Justice. The Corpora-

tion shall coordinate any investigation with the Department of Justice to avoid prejudicing criminal proceedings, unless the Department of Justice communicates to the Corporation that it does not intend to initiate criminal prosecution.

(3) Whenever the Corporation has determined after appropriate review, that there is reasonable cause to believe that a former employee has violated 18 U.S.C. 207 or 5 CFR Part 737, it shall initiate a disciplinary proceeding by providing the former employee with notice as defined in paragraph (c) of this section.

(4) At each stage of any investigation or proceeding under this section, the Chairman shall take whatever steps are necessary to protect the privacy of the former employee. Only those individuals participating in an investigation or hearing shall have access to information collected by the Corporation pursuant to its investigation of the alleged violation.

(c) *Adequate notice.* (1) The Corporation shall provide the former employee with adequate notice of its intention to institute a proceeding and an opportunity for a hearing.

(2) Notice to the former employee must include:

(i) A statement of the allegations (and the basis thereof) sufficiently detailed to enable the former employee to prepare an adequate defense;

(ii) Notification of the right to a hearing;

(iii) An explanation of the method by which a hearing may be requested; and

(iv) Notification that if a hearing is not requested within thirty days of receipt of notice, the Corporation will issue a final decision finding the alleged violations to have occurred.

(3) Failure to request a hearing within thirty days of the receipt of notice will be deemed an admission of the allegations contained in the notice and will entitle the Corporation to issue a final decision finding the alleged violations to have occurred.

(d) *Presiding official.* (1) The presiding official at proceedings under this Subpart shall be the Chairman, or an individual to whom the Chairman has delegated authority to make an initial decision (hereinafter referred to as "examiner").

(2) An examiner shall be an employee of the Corporation who is familiar with the relevant provisions of law and who is otherwise qualified to carry out the duties of that position. He or she shall be impartial. No individual who has participated in any manner in the decision to initiate the proceedings may serve as an examiner.

(e) *Time, date and place.* (1) The hearing shall be conducted at a reasonable time, date, and place.

(2) On setting a hearing date, the presiding official shall give due regard to the former employee's need for:

(i) Adequate time to prepare a defense properly; and

(ii) An expeditious resolution of allegations that may be damaging to his or her reputation.

(f) *Hearing rights.* A hearing shall include the following rights:

(1) To represent oneself or to be represented by counsel;

(2) To introduce and examine witnesses and to submit physical evidence;

(3) To confront and cross-examine adverse witnesses;

(4) To present oral argument; and

(5) To receive a transcript or recording of the proceedings, on request.

(g) *Burden of proof.* In any hearing under this subpart, the Corporation has the burden of proof and must establish substantial evidence of a violation.

(h) *Hearing decision.* (1) The presiding official shall make a determination exclusively on matters of record in the proceeding, and shall set forth in the decision all findings of fact and conclusions of law relevant to the matters at issue. If the hearing is conducted by the Chairman, the resulting written determination shall be an initial decision.

(2) Within thirty days of the date of an initial decision, either party may appeal the decision to the Chairman. The Chairman shall base his or her decision on such appeal solely on the record of the proceedings on those portions thereof cited by the parties to limit the issues.

(3) If the Chairman modifies or reverses the initial decision, he or she

shall specify such findings of fact and conclusions of law as are different from those of the examiner.

(4) If no appeal is taken from an initial decision within thirty days, the initial decision shall become a final decision.

(i) *Sanctions.* The Chairman shall take appropriate action in the case of any individual who is found to be in violation of 18 U.S.C. 207 or 5 CFR Part 737 after a final decision by:

(1) Prohibiting the individual from making, on behalf of any other person except the United States, any formal or informal appearance before, or, with the intent to influence, any oral or written communication to, the Corporation on any matter of business for a period not to exceed five years, which may be accomplished by directing employees of the Corporation to refuse to participate in any such appearance or to accept any such communication; or

(2) Taking other appropriate disciplinary action.

(j) *Judicial review.* Any person found by the Corporation to have participated in a violation of 18 U.S.C. 207 or 5 CFR Part 737 may seek judicial review of the determination in an appropriate United States District Court.

PART 906—AFFIRMATIVE ACTION POLICY AND PROCEDURE

Subpart A—Development Program

Sec.
906.1 Purpose and policy.
906.2 Definitions.
906.3 Procedures.
906.4 Formulation of affirmative action plan.
906.5 Administration of affirmative action plan.
906.6 Implementation.
906.7 Incentives.
906.8 Review and monitoring.
906.9 Voluntary compliance.
906.10 Confidentiality.

EXHIBIT A—SUGGESTED MINIMUM GUIDELINES AND GOALS
EXHIBIT B—GUIDELINES FOR ESTABLISHING STRATEGY TO IMPLEMENT AFFIRMATIVE ACTION PERSONNEL PLAN

AUTHORITY: Pennsylvania Avenue Development Corporation Act of 1972, as amended, sec. 6(6), Pub. L. 92-578, 86 Stat. 1270 (40 U.S.C. 875(6)); E.O. 11625 (36 FR 19967) Oct. 14, 1971; Title VII Civil Rights Act of 1964 (42 U.S.C. 2000e-2); Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, secs. 119, 122(d)(2), Pub. L. 95-602, 92 Stat. 2982, 2987 (29 U.S.C. 794); E.O. 12138 (44 FR 29637) May 22, 1979.

SOURCE: 44 FR 37226, June 26, 1979, unless otherwise noted.

Subpart A—Development Program

§ 906.1 Purpose and policy.

(a) One of the objectives stated in the Congressionally approved Pennsylvania Avenue Plan—1974 is insuring that minority businesses, investors, and workers have an opportunity to share in the benefits that will occur as a result of redevelopment. Accordingly, the Corporation will take affirmative action to assure full minority participation in activities and benefits that result from implementation of The Pennsylvania Avenue Plan—1974.

(b) It is the policy of the Pennsylvania Avenue Development Corporation to foster a progessive Affirmative Action Program that affords minorities, women, handicapped persons, and Vietnam era veterans a fair and meaningful share in the opportunities generated by the development activities of the Corporation.

(c) It is mandatory for developers who respond to a solicitation for proposals made by the Corporation to comply with the rules stated in Subpart A of Part 906.

(d) It is mandatory for developers who receive property interests of ten percent (10%) or more of the area of a development parcel from the Corporation to comply with the rules stated in Subpart A of Part 906.

(e) The Corporation will encourage any entity not described in paragraphs (c) and (d) of this section to comply with the requirements set forth in this Subpart A of Part 906.

§ 906.2 Definitions.

As used in this part:

(a) "Affirmative Action Plan" means a plan which at a minimum includes:

(1) A statement of the affirmative action policy of the development team

and a list of the names of the members of the development team including equity investors, and identification of minority owned businesses and investors;

(2) A contracting and purchasing plan;

(3) A leasing plan;

(4) A personnel plan;

(5) An equity investment plan;

(6) The goals, timetables and strategy for achieving the goals of the developer;

(7) A list of specific, quantifiable committed opportunities; and

(8) Designation of an Affirmative Action Officer.

(b) "Committed Opportunity" means an opportunity set aside and committed for the sole involvement of a woman, minority group member, Vietnam era veteran, handicapped person, or minority owned business, including opportunities for training and equity investment.

(c) "Contracting and purchasing plan" means a plan for the subject project which at a minimun includes the following:

(1) A list of all minority enterprises and minority owned businesses that are involved in the development proposal or its implementation;

(2) An analysis of the types of contracts and purchases that will be required by the development team in order to implement the development through and including operation of the completed development;

(3) A list of goals and timetables by category of purchase or contract for involvement of minority owned businesses in the development process;

(4) Strategy for achieving the goals established; and

(5) A list of committed opportunities for the involvement of minority owned businesses in the development process.

(d) "Developer" means a person partnership, company, corporation, association, or other entity that develops a new structure on a site or substantially renovates a structure on a site within the Corporation's development area where the site either: (1) Has been offered to the public by the Corporation for development, or (2) the Corporation has transferred real property rights that equal or exceed ten percent (10%) of the area of the development parcel.

(e) "Development parcel" is an area of land established by the Corporation to be a minimum developable site under The Pennsylvania Avenue Plan—1974, as amended, and The Planning and Design Objectives, Controls, and Standards of the Corporation (36 CFR Part 920 *et seq.*).

(f) "Development team" means the group that submits a proposal to develop a parcel including developers, architects, engineers, lawyers, financial institutions, insurance companies, and others who help formulate, develop, and otherwise make a proposal to the Corporation.

(g) "Equity Investment Plan" means a plan for the subject project which at a minimum includes the following:

(1) A statement as to whether or not equity investment has been or will be solicited to implement the subject project;

(2) A statement as to whether or not a joint venture has been or will be formed to implement the subject project;

(3) If equity investment has been solicited or if a joint venture has been formed, a statement of the efforts made to involve members of minority groups and women when these opportunities were offered;

(4) If equity investment will be solicited, or a joint venture will be formed, a plan to involve members of minority groups and women when these opportunities are offered, including a list of committed opportunities;

(5) A list of goals and a timetable for securing participation of members of minority groups and women in equity investment and joint venture.

(h) "Handicapped person" means any person who: (1) Has a physical or mental impairment that substantially limits one or more of the person's major life activities, (2) has a record of such impairment.

(i) "Leasing plan" means a plan for the subject project which at a mimimum includes the following:

(1) A retail plan showing the types of retail businesses to be included in the project and a plan for the types of uses for the balance of the development;

(2) Goals and methods for inclusion of minority enterprises as tenants in the project;

(3) Committed opportunities for leasing to minority enterprises.

(j) "Minority Enterprise" means any enterprise that is either a minority owned business or a not for profit or non-profit organization (as defined in 26 U.S.C. 501(c)(3) or (c)(6)) and also fulfills one or more of the following criteria:

(1) The Board of Directors or equivalent policy making body is comprised of members, a majority of whom are minorities or women and the chief executive officer of the organization is a minority group member or a woman; or

(2) The objectives of the organization as described in its charter are substantially directed toward the betterment of minorities or women.

(k) "Minority group member" means any "person" residing in the United States who is Negro, Hispanic, Oriental, Native American, Eskimo, or Aleut, as defined below:

(1) Negro—is an individual of the Negro race of African origin;

(2) Hispanic—is an individual who is descended from and was raised in or participates in the culture of Spain, Portugal, or Latin America, or who has at least one parent who speaks Spanish or Portuguese as part of their native culture;

(3) Oriental—is an individual of a culture, origin, or parentage traceable to the areas south of the Soviet Union, East of Iran, inclusive of the islands adjacent thereto, located in the Pacific including, but limited to, Taiwan, Indonesia, Japan, Hawaii, and the Philippines, together with the islands of Polynesia;

(4) Native American—is an individual having origins in any of the original people of North America, who is recognized as an Indian by either a tribe, tribal organization, or suitable authority in the community. For purposes of this section a suitable authority in the community may be an educational institution, a religious organization, or a state or Federal agency.

(5) Eskimo—is an individual having origins in any of the original peoples of Alaska;

(6) Aleut—is an individual having origins in any of the original peoples of the Aleutian Islands.

(l) "Minority owned business" means a business that is:

(1) A sole proprietorship owned by a minority group member or a woman;

(2) A business entity at least 50 percent of which is owned by minority group members or women;

(3) A publicly owned business at least 51 percent of the stock of which is owned by minority group members or women;

(4) A certified minority owned business as evidenced by a certificate satisfactory to the Corporation's Affirmative Action Officer, and signed by the owner or the executive officer of the minority owned business.

For purposes of this definition, ownership means that the risk of gain or loss and the amount of control exercised must be equivalent to the ownership percentage.

(m) "Personnel plan" means a plan for the subject project which at a minimum includes the following:

(1) An analysis of participation of minority group members, women, Vietnam era veterans, and handicapped persons in the development project including an evaluation by category of employment, i.e., professional and managerial, skilled, semi-skilled, trainee, and other, and the number of employees in each category;

(2) An analysis of the salaries of minority group members, women, handicapped persons, and Vietnam era veterans showing the relative position of these employees with those not covered by the Affirmative Action Plan;

(3) Goals and timetables for employment by category and salary level of minorities, women, Vietnam era veterans, and handicapped persons employed for the development parcel;

(4) Strategy for achieving the goals established (see Exhibit B);

(5) A list of committed opportunities for the employment of minority group members, women, Vietnam era veterans, and handicapped persons.

(n) "Vietnam era veteran" means a person who:

(1) Served on active duty for a period of more than 180 days, any part

of which occurred during the Vietnam era, and was discharged or released therefrom with other than a dishonorable discharge; or

(2) Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed during the Vietnam era.

§ 906.3 Procedures.

(a) Affirmative Action Plans must be submitted to the Corporation at the following times:

(1) At the time a response is submitted to the Corporation's solicitation for proposals, the response must include an Affirmative Action Plan;

(2) If a property right exceeding 10 percent of the area of the development parcel is made available by the Corporation, but without the Corporation having made a solicitation for proposals, the developer must submit an Affirmative Action Plan within 30 days after the start of negotiations with the Corporation.

(b) Affirmative Action Plans will be reviewed as follows:

(1) Each Affirmative Action Plan submitted to the Corporation will be reviewed by the Corporation's Affirmative Action Officer, or his designee.

(2) In the case of a developer who responds to a solicitation for proposals, the Affirmative Action Plan will be reviewed by the Affirmative Action Officer, and if the Plan is in substantial compliance with the goals set forth in Exhibit A, the Plan and the recommendation of the Affirmative Action Officer will be submitted to the Chairman of the Board for approval prior to the Board's final selection.

(3) In the case of a developer who receives 10 percent or more of the area of a development parcel from the Corporation, the Affirmative Action Plan will be reviewed by the Corporation's Affirmative Action Officer, and if the Plan is in substantial compliance with the goals set forth in Exhibit A, the Plan and the recommendation of the Affirmative Action Officer will be submitted to the Chairman of the Board for approval within 15 days of submission.

(4) The Chairman may approve any Affirmative Action Plan that is not in substantial compliance with the goals set forth in Exhibit A, but for which the developer has documented a genuine effort to meet the goals of the regulations and complied with the spirit of the Corporation's policy.

(5) The Chairman may, in his discretion, submit any Affirmative Action Plan to the Board of Directors for approval, if there is not substantial compliance with the goals set forth in Exhibit A.

(6) The review of the Affirmative Action Plan will determine conformity with The Pennsylvania Avenue Plan—1974, the policy of the Corporation's Board of Directors, and the regulations and guidelines set forth in this Subpart A, Part 906.

(c) Revisions: (1) The Corporation may require a developer at any time prior to approval of the Affirmative Action Plan to revise the Plan for compliance with the requirements of this subpart.

(2) Each developer required to comply with this Subpart must submit for approval an up-dated Affirmative Action Plan at the commencement of construction, at the commencement of occupancy, and at the commencement of operation or management of any portion of the facility by the developer or a related entity. Each revision of the Affirmative Action Plan must address all the requirements set forth in § 906.4.

(3) The Corporation's Affirmative Action Officer will review all revisions submitted to the Corporation. If the revision is a substantial change from the originally approved Plan, the review procedures set forth in paragraph (b) of this section will be applicable. If the revision submitted is not a substantial change from the originally approved Plan, the Corporation's Affirmative Action Officer may approve the revision.

§ 906.4 Formulation of affirmative action plan.

(a) The developer, in formulating the Affirmative Action Plan, should consider all phases of development from establishment of the development team to operation and management of the development project including each component of the project (e.g., hotel, retail, office, residential). The developer should also consider the personnel profile of project contractors, subcontractors.

(b) For each phase and each component, the developer should give consideration to creating business and employment opportunities and committed opportunities in the following:

(1) Equity participation;

(2) Professional and technical services such as legal, architectural, engineering, and financial;

(3) Purchasing materials and supplies in connection with construction and operation;

(4) Contracting for construction, operation, and maintenance; and,

(5) Financing, including construction and permanent financing, and other financial and banking services.

§ 906.5 Administration of affirmative action plan.

(a) The developer shall appoint an Affirmative Action Officer, and for projects exceeding $10 million in cost, the person appointed must have affirmative action as a primary responsibility.

(b) The developer shall report to the Corporation periodically its progress in meeting the goals and timetables in its Affirmative Action Plan with respect to its contracting and purchasing plan, leasing plan, and committed opportunities. In meeting the reporting requirements the developer shall:

(1) Count an individual only once for reporting purposes;

(2) Count an individual in the first appropriate category as follows:

(i) Minority Group Member;

(ii) Handicapped Person;

(iii) Woman;

(iv) Vietnam Era Veteran;

(3) Report the dollar amount of contracts and purchases from minority owned businesses including subcontracts;

(4) In the event 10 percent or more of the dollar amount of a contract, subcontract, or purchase from a minority owned business is performed by other than a minority owned business, the developer shall report only the dollar amount performed by the minority owned business.

§ 906.6 Implementation.

(a) Each developer's Affirmative Action Plan will be incorporated into the real estate agreement between the developer and the Corporation.

(b) Each developer shall include a clause requiring a contracting and purchasing plan and a personnel plan in any contract exceeding $500,000.

(c) Each developer should consider including a clause requiring a contracting and purchasing plan and a personnel plan in any contract less than $500,000.

(d) In order that the Corporation may be of assistance, and to the extent practical, the developer shall notify the Corporation's Affirmative Action Officer of any failure to meet the approved Affirmative Action Plan.

(e) The Corporation, at the request of the developer, shall provide the developer with assistance for meeting the goals set forth in the Affirmative Action Plan. Such assistance may be provided in the form of lists of minority enterprises, sources for recruiting and advertising, as well as other available information.

§ 906.7 Incentives.

(a) At the request of the developer, the Corporation may agree to deferral of a portion of rental, not to exceed 50 percent, during construction and during the first year of operation following construction of any phase of the development project. Allowable rent deferral during the construction phase will be two percent of the total base rent for each one percent of the value of all construction contracts which have been awarded to Minority Owned Businesses, not to exceed 50 percent. Rent deferral during the first year of operation following construction of any phase of the development project will be four percent for each one percent of total equity owned by minority group members, minority owned businesses, and women.

(b) Following review of Affirmative Action reports submitted to the Corporation pursuant to § 906.5(b), the Corporation will determine the developer's compliance with the goals set forth in the approved Affirmative Action Plan. Compliance with the goals established in the Plan will be measured by adding the percentages reported including overages in each category and dividing that by the number of categories covered in the Plan.

(c) If 75 percent compliance is not achieved during any rent deferral period, the Corporation will afford the developer 120 days to achieve at least that level of compliance. If, at the end of that 120 day period, 75 percent compliance is not achieved, all rental deferral, together with interest, will be due and payable to the Corporation on the 10th day following receipt of written notice that payment of the deferred rent has been accelerated.

§ 906.8 Review and monitoring.

The Corporation, either by its employees, consultants, or other government agency, shall analyze and monitor compliance with the developer's approved Affirmative Action Plan. The Corporation shall rely on the reports submitted by the developer. However:

(a) Further investigation by the Corporation may be undertaken if problems are brought to the attention of the Corporation through any reliable source, or if any formal complaints are filed against the developer that relate to performance of the Affirmative Action Plan; and

(b) The Corporation reserves the right to audit the records of the developer that pertain to any report submitted to the Corporation.

§ 906.9 Voluntary compliance.

The Corporation will encourage any individual or entity not described in § 906.1(c) or (d) to submit and adopt an Affirmative Action Plan on any development project for which the Corporation's review and approval is required to determine conformity of the development project with the The Pennsylvania Avenue Plan—1974. Any such Affirmative Action Plan should accompany the development plans.

§ 906.10 Confidentiality.

All information submitted to the Corporation pursuant to this Subpart A will be kept confidential, except as availability to the public may be required by the Freedom of Information Act.

EXHIBIT A—SUGGESTED MINIMUM GUIDELINES AND GOALS

The following are suggested for consideration by developers in formulation of minimum affirmative action goals for the development parcel:

(a) Equity participation—10 percent participation by minority group members, women, and minority owned businesses as investors in ownership of the development parcel.

(b) Contracts for professional and technical services—20 percent of the dollar value of the contracts to minority owned businesses.

(c) Persons providing professional or technical services—20 percent should be minority group members, women, handicapped persons, or Vietnam era veterans.

(d) Construction contracting—15 percent of the total dollar value to minority owned businesses. (In order to accomplish this goal, the developer must require that any prime contractor show at least 15 percent minority subcontractors unless the prime contractor is a minority contractor.)

(e) Construction employment should comply with the Washington Plan as a minimum.

(f) Purchasing—20 percent of the dollar value of all purchases of materials and supplies to minority owned businesses.

(g) Hotel employment—20 percent of all hotel employees, 15 percent of all personnel earning an excess of $2,000 a month (in 1978 dollars), and 60 percent of trainees for hotel positions should be minority group members, women, handicapped persons, or Vietnam era veterans.

(h) Leasing of space—15 percent of the retail space should be targeted for minority enterprises.

(i) Committed opportunities—should be created for professional, technical, construction, hotel, or other type operations where the representation of minority group members, women, or handicapped persons in a field is inconsistent with the demographic profile of the Washington metropolitan area.

EXHIBIT B—GUIDELINES FOR ESTABLISHING STRATEGY TO IMPLEMENT AFFIRMATIVE ACTION PERSONNEL PLAN

The following are suggested as the types of activities to be considered in the development of strategies for the affirmative action personnel plan:

(1) "Vigorous" searching for qualified minority and women applicants for job openings in professional and managerial positions, often including recruitment visits to educational institutions with large minority or female enrollments.

(2) Wide dissemination of affirmative action policy in advertisements and employment literature.

(3) Utilization of minority media in recruitment advertisements.

(4) Notification of job openings to minority community organizations and associations.

(5) Listing of all employment openings with compensation of under $20,000 per year at a local office of the State Employment Service (or union hiring hall when union labor is required).

(6) Periodic review of minority, female, Vietnam era veteran, and handcapped employees to identify underutilized and unutilized skills and knowledge as well as opportunities for reassignment.

(7) Utilization of merit promotion and on-the-job training programs to create career ladders or otherwise qualify minority, female, Vietnam era veteran, and handicapped employees for advancement.

PART 907—ENVIRONMENTAL QUALITY

Sec.

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Appendix A

Authority: 40 U.S.C. 875(8); 42 U.S.C. 4321.

Source: 47 FR 8768, Mar. 2, 1982, unless otherwise noted.

§ 907.1 Policy.

The Pennsylvania Avenue Development Corporation's policy is to:

(a) Use all practical means, consistent with the Corporation's statutory authority, available resources, and national policy, to protect and enhance the quality of the human environment;

(b) Ensure that environmental factors and concerns are given appropriate consideration in decisions and actions by the Corporation;

(c) Use systematic and timely approaches which will ensure the integrated use of the natural and social sciences and environmental design arts in planning and decision making which may have an impact on the human environment;

(d) Develop and utilize ecological and other environmental information in the planning and development of projects implementing the Plan;

(e) Invite the cooperation and encourage the participation, where appropriate, of Federal, District of Columbia, and regional authorities and the public in Corporation planning and decision-making processes, which affect the quality of the human environment; and

(f) Minimize any possible adverse effects of Corporation decisions and actions upon the quality of the human environment.

§ 907.2 Purpose.

These regulations are prepared to supplement Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act of 1969, as amended, and describe how the Pennsylvania Avenue Development Corporation intends to consider environmental factors and concerns in the Corporation's decision making process.

§ 907.3 Definitions.

(a) "CEQ Regulations" means the regulations for implementing the procedural provisions of the National Environmental Policy Act of 1969 as promulgated by the Council on Environmental Quality, Executive Office of the President, appearing at 40 CFR Parts 1500-1509 (43 FR 55978-56007) and to which this part is a supplement.

(b) "The Act of October 27, 1972" or "Act" means the Pennsylvania Avenue Development Corporation Act of 1972, Pub. L. 92-578, October 27, 1972, 86 Stat. 1266 (40 U.S.C. 871).

(c) "The Plan" means the Pennsylvania Avenue Plan—1974, prepared by the Pennsylvania Avenue Development Corporation pursuant to the Act of October 27, 1972.

(d) "The Corporation" means the Pennsylvania Avenue Development Corporation, a wholly owned government corporation of the United States created by the Act of October 27, 1972.

(e) "Board of Directors" means the governing body of the Corporation in which the powers and management of the Corporation are vested by the Act of October 27, 1972.

(f) "EIS" means an environmental impact statement as defined in § 1508.11 of the CEQ Regulations.

(g) "Final EIS" means The Final Environmental Impact Statement, dated September 1974, prepared by the Corporation on The Pennsylvania Avenue Plan—1974.

(h) "Development Area" means the area under the Corporation's jurisdiction as specified in Section 2(f) of the Act of October 27, 1972 and for which The Plan has been prepared and will be implemented by the Corporation.

(i) "Decision Maker" means the Board of Directors, unless a delegation to the Chairman, a member or committee of the Board of Directors, or the Executive Director has been made by the Bylaws of the Corporation, a resolution of the Board of Directors, or an appropriate written delegation of authority.

(j) "Private Developer" means an individual, firm, joint venture, or other entity other than the Corporation which seeks to construct, reconstruct, rehabilitate, or restore real property within the development area.

(k) Other terms used in this part are defined in 40 CFR Part 1508 of the CEQ Regulations.

§ 907.4 Designation of responsible Corporation official.

The Development Director is the Corporation official responsible for implementation and operation of the Corporation's policies and procedures on environmental quality and control.

§ 907.5 Specific responsibilities of designated Corporation official.

(a) Coordinate the formulation and revision of Corporation policies and procedures on matters pertaining to environmental protection and enhancement.

(b) Establish and maintain working relationships with relevant government agencies concerned with environmental matters.

(c) Develop procedures within the Corporation's planning and decisionmaking processes to ensure that environmental factors are properly considered in all proposals and decisions in accordance with this part.

(d) Develop, monitor, and review the Corporation's implementation of standards, procedures, and working relationships for protection and enhancement of environmental quality and compliance with applicable laws and regulations.

(e) Monitor processes to ensure that the Corporation's procedures regarding consideration of environmental quality are achieving their intended purposes.

(f) Advise the Board of Directors, officers, and employees of the Corporation of technical and management requirements of environmental analysis, of appropriate expertise available, and, with the assistance of the Office of the General Counsel, of relevant legal developments.

(g) Monitor the consideration and documentation of the environmental aspects of the Corporation's planning and decisionmaking processes by appropriate officers and employees of the Corporation.

(h) Ensure that all environmental assessments and, where required, all EIS's are prepared in accordance with the appropriate regulations adopted by the Council on Environmental Quality and the Corporation, and are submitted with all proposed legislation.

(i) Consolidate and transmit to appropriate parties the Corporation's comments on EIS's and other environmental reports prepared by other agencies.

(j) Acquire information and prepare appropriate reports on environmental matters required of the Corporation. Information collection activities will be conducted in accordance with the Paperwork Reduction Act of 1980 and approval of OMB will be obtained prior to commencing such activities.

(k) Coordinate Corporation efforts to make available to other parties information and advice on the Corporation's policies for protecting and enhancing the quality of the environment.

§ 907.6 Major decision points.

(a) The possible environmental effects of a proposed action or project must be considered along with technical, economic, and other factors throughout the decisionmaking process. For most Corporation projects there are three distinct stages in the decision making process:

(1) Conceptual or preliminary stage;

(2) Detailed planning or final approval stage;

(3) Implementation stage.

(b) Environmental review will be integrated into the decision making process of the Corporation as follows:

(1) During the conceptual or preliminary approval study stage, the responsible Corporation official shall determine whether the proposed action or project is one which is categorically excluded, requires an environmental assessment or an EIS.

(2) Prior to proceeding from the conceptual or preliminary approval stage to the detailed planning or final approval stage, an environmental assessment and the determination as to whether an EIS is required must be completed.

(3) An EIS, if determined necessary, must be completed and circulated prior to the decision to proceed from the detailed planning stage to implementation.

§ 907.7 Determination of requirement for EIS.

Determining whether to prepare an environmental impact statement is the first step in applying the NEPA process. In deciding whether to prepare an environmental impact statement, the responsible Corporation official will determine whether the proposal is one that:

(a) Normally requires an environmental impact statement.

(b) Normally does not require either an environmental impact statement or an environmental assessment (categorical exclusion).

(c) Normally requires an environmental assessment, but not necessarily an environmental impact statement.

§ 907.8 Actions that normally require an EIS.

PADC shall perform or have performed an environmental assessment to determine if a proposal requires an environmental impact statement. However, it may be readily apparent that a proposed action will have a significant impact on the environment; in such cases, an environmental assessment is not required and PADC will immediately begin to prepare or have prepared the environmental impact statement. To assist in determining if a proposal or action normally requires the preparation of an environmental impact statement, the following criteria and categories of action are provided.

(a) *Criteria.* Criteria used to determine whether or not actions or proposals may significantly affect the environment and therefore require an environmental impact statement are described in 40 CFR 1508.27 of the CEQ Regulations and as follows:

(1) Buildings or facades designated for retention in the Plan will be adversely affected by the proposal or action.

(2) Traffic generated by the proposal or action would represent a substantial increase over the traffic projections assessed in the Final EIS in the average daily traffic volume on avenues and streets within the Development Area or its environs;

(3) Air quality in the Development Area and its environs would be substantially affected by the proposal or action based upon the District of Columbia's adopted standard for hydrocarbons and carbon monoxide;

(4) Solid waste disposal generated by a project of the Corporation or of a developer who is constructing, reconstructing, or rehabilitating that project, would have an adverse effect on the capacity of the relevant solid waste disposal facility and compliance with "Solid Waste Management Guidelines" of the U.S. Environmental Protection Agency and related local and regional controls;

(5) Public utilities have insufficient capacity to provide reliable service to a project within the Development Area; and

(6) A project will be inconsistent with major elements of the Zoning Regulations of the District of Columbia as they are applicable to the Development Area.

(b) *Categories of action.* The following categories of action normally require an environmental impact statement:

(1) Amendments or supplements to the Plan that constitute a "substantial change" to the Plan as defined in 40 U.S.C. 874(c) of the Act.

(2) Acquisition or disposal of real property by the Corporation *not* related to any specific decision, plan, or program adopted by the Board of Directors of the Corporation for which an environmental assessment or an assessment and an EIS has been prepared.

(3) Legislative proposals made to Congress.

(4) Funding and/or construction by the Corporation or its agents or representatives of any building, if that activity is not consistent with the Plan and the Final EIS.

§ 907.9 Preparation of an EIS.

(a) *Notice of intent.* When PADC decides to prepare an environmental impact statement, it shall publish a notice of intent in the FEDERAL REGISTER in accordance with 40 CFR 1501.7 and 1508.22 of the CEQ Regulations.

(b) *Preparation.* After determining that an environmental impact statement will be prepared and publishing the notice of intent, PADC will begin to prepare or have prepared the environmental impact statement. Procedures for preparing the environmental impact statement are set forth in 40 CFR 1502, CEQ Regulations.

(c) *Supplemental environmental impact statements.* PADC may supplement a draft or final environmental impact statement at any time. PADC shall prepare a supplement to either the draft or final environmental impact statement when (1) substantial changes are proposed to an action contained in the draft or final EIS that are relevant to environmental concerns or there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts; or (2) actions are proposed which relate or are similar to other action(s) taken or proposed and that together will have a cumulatively significantly impact on the environment.

§ 907.10 Categorical exclusion.

The CEQ Regulations provide for the categorical exclusion (40 CFR 1508.4) of actions that do not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required for such actions.

(a) *Criteria.* Criteria used to determine those categories of action that normally do not require either an environmental impact statement or an environmental assessment include:

(1) The action or proposal is consistent with the Plan or the Act, and the environmental effects have been previously analyzed in the Final EIS, a supplement thereto, or in an environmental assessment or an EIS previously prepared; or

(2) The total estimated cost directly attributable to the action or proposal does not exceed $500,000; or

(3) The action or proposal is related solely to internal administrative operations of the Corporation.

(b) *List of categorical exclusions.* Categories of action, identified in Appendix A (attached) have been determined by PADC to have no significant effect on the human environment and are therefore categorically excluded from the preparation of environmental impact statements and environmental assessments.

(c) *Changes to the list of categorical exclusion.* (1) The PADC List of Categorical Exclusion will be continually reviewed and refined as additional categories are identified and as experience is gained in the categorical exclusion process.

(2) Additional categories of exclusion identified will be submitted to the Chairman of the Board of Directors for review and approval, and for amendments to this part, following public comment and review by the Council on Environmental Quality.

§ 907.11 Actions that normally require an environmental assessment.

If a proposal or action is not one that normally requires an environmental impact statement, and does not qualify for categorical exclusion, PADC will prepare or have prepared an environmental assessment.

(a) *Criteria.* Criteria used to determine those categories of action that normally require an environmental assessment, but not necessarily an environmental impact statement, include:

(1) Potential for minor degradation of environmental quality;

(2) Potential for cumulative impact on environmental quality; and

(3) Potential for impact on protected resources.

(b) *Categories of action.* The following categories of action normally require the preparation of an environmental assessment.

(1) Amendments to the Plan that do not constitute a "substantial change" to the Plan.

(2) Regulations promulgated by the Corporation that have significant environmental impact on the public or persons residing in the development area including businesses.

(3) Development proposals submitted to the Corporation by private developers that are consistent with the Plan and General Guidelines prepared by the Corporation.

(4) Activities related to the Public Improvements Program of the Corporation for which no previous environmental assessment or EIS has been prepared.

(5) Contracts, work authorizations, and master agreements related to and implementing programs, policies, and proposals not categorically excluded and for which no environmental assessments or for which no environmental assessment and EIS have been previously prepared.

(6) Street closures and other rearrangements of public space which were not covered in the Plan or the Final EIS.

(7) Acquisition/disposal of personal property by the Corporation not related to any specific decision, plan, or program adopted by the Board of Directors of the Corporation for which an environmental assessment or an environmental assessment and an EIS is required to be prepared.

(8) Proposed construction of any public building within the development area by any executive agency of the United States Government, any agency or department of the District of Columbia Government, or any other public or quasi-public entity.

§ 907.12 Preparation of an environmental assessment.

(a) *When to prepare.* PADC will begin the preparation of an environmental assessment as early as possible after it is determined by the responsible corporation official to be required. PADC may prepare an environmental assessment at any time to assist planning and decision-making.

(b) *Content and format.* An environmental assessment is a concise public document used to determine whether to prepare an environmental impact statement. An environmental assessment aids in complying with the Act when no environmental impact statement is necessary, and it facilitates the preparation of an environmental impact statement, if one is necessary. The environmental assessment shall contain brief discussions of the following topics:

(1) Purpose and need for the proposed action.

(2) Description of the proposed action.

(3) Alternatives considered, including the No Action alternative.

(4) Environmental effects of the proposed action and alternative actions.

(5) Listing of agencies, organizations or persons consulted.

(6) In preparation of the environmental assessment, the most important or significant environmental consequences and effects on the areas listed below should be addressed. Only those areas which are specifically relevant to the particular proposal should be addressed. Those areas should be addressed in as much detail as is necessary to allow an analysis of the alternatives and the proposal. The areas to be considered are the following:

(i) Natural/ecological features (such as floodplain, wetlands, coastal zones, wildlife refuges, and endangered species);

(ii) Air quality;

(iii) Sound levels;

(iv) Water supply, wastewater treatment and water runoff;

(v) Energy requirements and conservation;

(vi) Solid waste;

(vii) Transportation;

(viii) Community facilities and services;

(ix) Social and economic;

(x) Historic and aesthetic; and

(xi) Other relevant factors.

(c) *Finding of no significant impact.* If PADC completes an environmental assessment and determines that an environmental impact statement is not required, then PADC shall prepare a finding of no significant impact. The finding of no significant impact shall be made available to the public by PADC as specified in 40 CFR 1506.6 of the CEQ Regulations.

§ 907.13 Public involvement.

Interested persons may obtain information concerning any pending EIS or any other element of the environmental review process of the Corporation by contacting the Public Information Officer of the Corporation, 1331 Pennsylvania Avenue, NW, Suite 1220 North, Washington, DC 20004, telephone (202) 566-1218.

[47 FR 8768, Mar. 2, 1982, as amended at 50 FR 45824, Nov. 4, 1985]

§ 907.14 Corporation decision making procedures.

To ensure that at major decision making points all relevant environmental concerns are considered by the Decision Maker, the following procedures are established.

(a) An environmental document, i.e., the EIS, Environmental Assessment, Finding of No Signficant Impact, or Notice of Intent, in addition to being prepared at the earliest point in the decision making process, shall accompany the relevant proposal or action through the Corporation's decision making process to ensure adequate consideration of environmental factors.

(b) The decision maker shall consider in its decision making process only those decision alternatives discussed in the relevant environmental documents. Also, where an EIS has been prepared, the decision maker shall consider all alternatives described in the EIS. A written record of the consideration of alternatives during the decision making process shall be maintained.

(c) Any environmental document prepared for a proposal or action shall be made part of the record of any formal rulemaking by the Corporation.

§ 907.15 Approval of private development proposals.

(a) Each development proposal submitted by a private developer to the Corporation for its approval, unless categorically excluded, shall require, at a minimum, an environmental assessment.

(b) The Board of Directors may not take any approval action on a submitted development proposal of a private developer until such time as the appropriate environmental review has been prepared and submitted to the Board of Directors.

(c) At a minimum, and as part of any submission made by a private developer to the Board of Directors for its approval, a private developer shall make available data and materials concerning the development proposal sufficient to permit the Corporation to carry out its responsibilities on environmental review. When requested, the developer shall provide additional information that the Corporation believes is necessary to permit it to satisfy its environmental review functions.

(d) As part of a development proposal submission, a private developer may submit an environmental assessment on its development proposal.

(e) Where the responsible Corporation official determines that the preparation of an EIS is required, the EIS shall be prepared in accordance with Part 1502 of the CEQ Regulations. The responsible Corporation official may set time limits for environmental review appropriate to each development proposal, consistent with CEQ Regulations 40 CFR 1601.8 and 1506.10.

(f) The responsible Corporation official shall at the earliest possible time ensure that the Corporation commences its environmental review on a proposed development project and shall provide to a private developer any policies or information deemed appropriate in order to permit effective and timely review by the Corporation of a development proposal once it is submitted to the Board of Directors for approval. The official shall designate, for the benefit of the developer, staff members of the Corporation to advise the developer with regard to information that may be required in order to accomplish the Corporation's environmental review.

§ 907.16 Actions where lead Agency designation is necessary.

(a) Consistent with CEQ Regulations, § 1501.5, where a proposed action by the Corporation involves one or more other Federal agencies, or where a group of actions by the Corporation and one or more other Federal agencies are directly related to each other because of their functional interdependence or geographical proximity, the Corporation will seek designation as lead agency for those actions that directly relate to implementation of the Plan and those actions that relate solely to the Development Area.

(b) For an action that qualifies as one for which the Corporation will seek designation as lead agency, the Corporation will promptly consult with the appropriate Federal agencies such as the National Capital Planning Commission, the Department of the Interior, and the General Services Administration to establish lead agency and cooperating agency designations.

APPENDIX A

(a) Specific Corporation actions categorically excluded from the requirements for environmental assessment and an EIS are:

(i) Personnel actions;

(ii) Administrative actions and operations directly related to the operation of the Corporation (e.g., purchase of furnishings, services, and space acquisition for the Corporation offices);

(iii) Property management actions related to routine maintenance, operation, upkeep, etc., of real property owned by the Corporation;

(iv) Review of permit applications relating to minor development activities in the Development Area (sign approval, interior renovations, minor exterior changes to facade, etc.);

(v) Promulgation of development general and square guidelines that implement the Plan as covered by the Final EIS;

(vi) Contracts, work authorizations, procurement actions directly related to and implementing proposals, programs, and master agreements for which an environmental assessment or an environmental assessment and an EIS have been prepared, or which are related to administrative operation of the agency;

(vii) Acquisition/disposal by lease, easement, or sale of real and personal property owned by the Corporation subsequent to and implementing a prior decision of the Board of Directors for which an environmental assessment or an assessment and an EIS were prepared;

(viii) Activities directly related to and implementing the Public Improvements Program of the Corporation approved by the Board of Directors, and which are covered by a previously prepared environmental assessment or an environmental assessment and an EIS;

(ix) Demolition actions preparatory for development by the Corporation, other public agencies, or private developers subsequent to approval of development proposals made by the Board of Directors;

(x) Development proposal identical to the requirements of the Plan and which was included in an EIS previously prepared.

(b) An action which falls into one of the above categories may still require the preparation of an EIS or environmental assessment if the designated corporation official determines it meets the criteria stated in § 907.8(a) or involves extraordinary circumstances that may have a significant environmental effect.

PART 908—POLICY AND PROCEDURES TO FACILITATE THE RETENTION OF DISPLACED BUSINESSES AND RESIDENTS IN THE PENNSYLVANIA AVENUE DEVELOPMENT AREA

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AUTHORITY: 40 U.S.C. 874(*e*); 40 U.S.C. 875(8); 40 U.S.C. 877(d).

SOURCE: 48 FR 55459, Dec. 13, 1983, unless otherwise noted.

Subpart A—General

§ 908.1 Policy.

One of the goals of The Pennsylvania Avenue Plan—1974, as amended, ("The Plan") is the reduction of hardships experienced by businesses and residents within the development area of the Pennsylvania Avenue Development Corporation ("the Corporation") when they are displaced as a result of implementation of The Plan. It is the policy of the Corporation to provide displaced businesses and residents with a preferential opportunity to relocate within the development area so that they may share in the benefits brought to the area by the implementation of The Plan. This rule shall not be construed to affect the eligibility, rights or responsibilities of persons who may be entitled to benefits provided under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as implemented by the Corporation (36 CFR Part 904).

§ 908.2 Purpose.

The purpose of this rule is to: (a) provide a meaningful opportunity to businesses displaced by the Corporation's program to return to, or remain in, the Development Area; (b) establish procedures and requirements for displaced occupants by which they may establish and later exercise their preferential right to return to the Development Area; (c) establish procedures which the Corporation and private Developers must follow in providing Qualified Persons with the opportunity to obtain their preferential right to return to the Development Area.

§ 908.3 Definitions.

The following definitions shall apply to this part:

(a) "Developer" means a Person or team of Persons that has received preliminary approval for a development proposal or has been designated by the Corporation as Developer pursuant to a development competition.

(b) "Development Area" means the area described in Section 2 (f) of Pub. L. 92-578, October 27, 1972, as amended (40 U.S.C. 871 (f)), and for which the Plan has been prepared and will be implemented by the Corporation.

(c) "List" means the List of Qualified Persons maintained by the Corporation as provided in subsection 908.11 (a) of this rule.

(d) "Newly developed space" means any leaseable part of a new building in the Development Area upon which construction was commenced after October 27, 1972 or an existing building in the Development Area which after October 27, 1972 underwent substantial remodeling, renovation, conversion, rebuilding, enlargement, extension or major structural improvement, but not including ordinary maintenance or remodeling or changes necessary to continue occupancy.

(e) "Person" means a partnership, company, corporation, or association as well as an individual or family, but does not include a department, agency, or instrumentality of any Federal, state, or local government.

(f) "Previous location" means the space from which the Eligible Person was or is being displaced as a result of the Corporation's or Developer's acquisition of real property, or as a result of receiving a written order to vacate from the Corporation.

Subpart B—Preferential Right To Relocate

§ 908.10 Criteria of Qualified Person.

"Qualified Person" is either

(a) A Person whose place of business or residence was located in the Development Area and was displaced from its location by:

(1) The Corporation in connection with the acquisition of fee title, or a lesser interest, in the real property containing such business or residence; or

(2) A Developer in implementing a development project in accordance with the Plan; or

(b) A Person whose place of business or residence is located in the Development Area and who has received notice of initiation of negotiations by the Corporation for purchase of the real property containing such business or residence.

§ 908.11 List of Qualified Persons.

(a) The Corporation shall develop and maintain a List of Qualified Persons who meet the criteria of Qualified Person as defined in § 908.10 and who ask to be placed on that list.

(b) The Corporation shall notify each occupant displaced by development provided an address is available to the Corporation, of this policy and the procedures to be followed for placement on the List.

(c) A person who wishes to be included on the List shall notify the Corporation in writing to that effect. The notice to the Corporation shall include:

(1) The address of the Previous Location;

(2) A short statement indicating the nature of the Qualified Person's occupancy;

(3) The amounts and type of space occupied prior to displacement;

(4) A description of any specialized equipment or unusual requirements for occupancy; and

(5) A copy of the notice to vacate from the Developer or notice of initiation of negotiations from the Corporation if either of these was received by the Qualified Person.

(d) The Corporation shall:

(1) Review the information furnished by the Person including any notice;

(2) Request additional information, if necessary to make a determination of the Person's qualifications;

(3) Determine whether the Person is qualified to be listed, and if so place the Person on the list; and

(4) Notify the Person of its determination.

(e) The Corporation urges that any Person who wishes to be placed on the List request such placement as soon as the Person meets the criteria for Qualified Person established in § 908.10, and all Persons are encouraged to do so no later than one year of the time the Person is displaced in order to increase the opportunity to obtain Newly Developed Space. However, no Person shall be denied placement on the List because such placement was not requested within one year of displacement.

§ 908.12 Retention on the List of Qualified Persons.

(a) Once placed on the List, the Corporation shall keep a Person on the List until:

(1) The Corporation receives a written request from the Qualified Person to be removed from the List;

(2) The Qualified Person is relocated into or has a binding lease commitment for Newly Developed Space;

(3) The Qualified Person sells, transfers, or merges its interest in the dis-

placed business, unless after such change in ownership Qualified Persons have at least fifty-one percent of the interest in the resulting business; or

(4) The Corporation receives a mailing returned from the Post Office that the Person is not located at the known address and left no forwarding address, provided that the Corporation shall reinstate any such removed name if the Person provides the Corporation with a current address; or

(5) The Corporation ceases operations upon completion of the Plan.

(b) A Qualified person relocated into newly developed space, may only again be placed on the List:

(1) If another branch of its business is subsequently displaced from space within the Development Area which is not Newly Developed Space; and

(2) If all requirements of § 908.10 of the rule are met with regard to the subsequent displacement.

§ 908.13 Rights of Qualified Persons.

(a) As provided in §§ 908.14 (c) and 908.15 (b), each Qualified Person on the List shall receive notices of opportunities to occupy Newly Developed Space as opportunities become available.

(b) As provided in §§ 908.14 (d) and 908.15 (c), each Qualified Person on the List shall be notified of any subsequent changes in the leasing plan which are, in the Corporation's opinion, major.

(c) Each Qualified Person on the List, who is interested in negotiating for occupancy of Newly Developed Space shall, within two weeks after receiving notice of a tenanting opportunity, provide written notice of its interest in the tenanting opportunity to the Developer, and furnish a copy of the written notice to the Corporation.

(d) Each Qualified Person on the List who provides a written notice of interest shall have ninety days following the Developer's receipt of the notice of interest for exclusive negotiations with the Developer for occupancy of the Developer's Newly Developed Space. During the ninety day period the Developer, subject to §§ 908.14 and 908.15 of this rule, shall not negotiate tenanting opportunities for the same Newly Developed Space requested by the Qualified Person with other than Qualified Persons.

(e) A Qualified Person's opportunity to occupy Newly Developed Space shall not be limited to the square on which its previous location was situated but extends throughout the Development Area. Similarly, no Qualified Person has an absolute right to return to the square where previous location was situated.

(f) A Qualified Person's opportunity to occupy space may be exercised in the Development Area at any time during the Corporation's existence, but such opportunity may only be exercised within Newly Developed Space.

(g) A Qualified Person has one opportunity to occupy Newly Developed Space for each location in the Development Area from which it is displaced.

(h) The Corporation cannot assure any Qualified Person that it will be relocated to Newly Developed Space.

§ 908.14 Requirements placed on developers that have acquired or leased real property from the Corporation

Developers who have acquired or leased real property from the Corporation shall:

(a) Notify the Corporation, within six months of the approval of the Developer's building permit, of its leasing plan and when it intends to begin seeking tenants. The Developer shall include at least the following in its leasing plan:

(1) The mix of uses and estimated square footage for each use;

(2) The rentals to be charged by type of use and location;

(3) The terms and conditions to be included in the leases, including financial participation;

(4) The selection criteria to be used by either the Developer or its agents; and

(5) The projected completion and occupancy dates.

(b) Notify the Corporation of any changes in the Developer's leasing plan.

(c) Send registered letters to all Qualified Persons on the List notifying them that the developer is seeking tenants and advising them that they have two weeks to provide the developer with written notice of their interest and ninety days thereafter for exclusive negotiations. This letter shall include a description of the mix of uses in the project, the rentals to be charged by type of use and location, the terms and conditions to be included in leases, the projected completion and occupancy dates, and the selection criteria to be used to choose tenants. The Developer will furnish the Corporation with an enumeration of the Qualified Persons it has notified and a copy of the letter and any attachments sent.

(d) Notify in writing each Qualified Person whom the Developer has previously contacted of changes in the Developer's leasing plan which the Corporation determines are major.

(e) Provide a ninety day period for exclusive negotiations with Qualified Persons, said period to commence with the timely receipt by the Developer of the written notice of interest from the Qualified Person. During this period the Developers shall:

(1) Negotiate tenanting opportunities only with Qualified Persons who have notified the Developer of their interest in the opportunity;

(2) Not seek other potential tenants or negotiate agreements to occupy the Newly Developed Space requested by Qualified Persons with anyone other than those Qualified Persons who have timely notified the Developer of their interest in the opportunity, except that a Developer may negotiate agreements with equity partners in the project who will become tenants or with prime tenants; and

(3) Negotiate in good faith with interested Qualified Persons and seek to accommodate them as tenants.

(f) Report to the Corporation at the conclusion of the ninety day period of exclusive negotiations concerning the results of its efforts. In particular the developer shall:

(1) State the number of responses which it received from Qualified Persons;

(2) State the number of Qualified Persons with whom it has reached agreement and the name of each;

(3) State the number of Qualified Persons with whom it is still negotiating and the name of each; and

(4) Describe the Developer's negotiations with each Qualified Person including a summary of each communication between the Developer and each Qualified Person with whom agreement has not been reached, the Developer's best offer to each Qualified Person, the best offer of each Qualified Person to the Developer, and the specific reasons why any Qualified Persons did not meet the selection criteria.

(g) Report to the Corporation quarterly thereafter until the project is fully leased or there are no more Qualified Persons interested in leasing space, whichever first occurs, concerning the results of its nogotiations with Qualified Persons. In particular the Developer shall state:

(1) The number of Qualified Persons with whom it has reached agreement and the name of each;

(2) The percentage of square feet of total leasable space which it has leased to Qualified Persons; and

(3) A description of the Developer's negotiations with each Qualified Person including a summary of each communication between the Developer and each Qualified Person with whom agreement has not been reached, the Developer's best offer to each Qualified Person, the best offer of each Qualified Person to the Developer, and the specific reason why the Developer determines any Qualified Person did not meet its selection criteria.

§ 908.15 Requirements placed on developers that have not acquired or leased real property from the Corporation.

The Corporation shall encourage Developers that do not acquire or lease real property from the Corporation to lease to Qualified Persons.

(a) While reviewing the Developer's preliminary or final plans, the Corporation shall explore the tenanting opportunities proposed by the Developer and furnish the Developer with the List.

(b) The Corporation shall notify those Qualified Persons on the List who appear to be prospective tenants for the available tenanting opportunities of this tenanting opportunity. To the extent that such information is available to the Corporation, these notices shall specify the mix of uses in the project, the rentals to be charged by type of use and location, the terms and conditions to be included in the leases, the projected completion and occupancy dates and the selection criteria to be used in choosing tenants.

(c) The Corporation shall notify in writing each Qualified Person whom it has previously contacted of changes in the Developer's plan provided the Corporation is informed of the changes and determines the changes are major.

(d) The Corporation shall request that the Developer make every effort to lease space to Persons on the List and to report to the Corporation the names of those Qualified Persons who have reached an agreement with the Developer.

Subpart C—[Reserved]

Subpart D—Review Procedure

§ 908.30 Request for review

(a) Any Person aggrieved by a determination concerning placement or retention on the List or any other right under Subpart B of this rule, may request that the determination be reviewed.

(b) The applicant's request for review, shall be in writing, shall state the reasons for requesting review, and shall describe the relief sought (including all information the aggrieved person believes to be relevant). The applicant's written request shall be sent to the Director of Real Estate, Pennsylvania Avenue Development Corporation, 1331 Pennsylvania Avenue, NW, Suite 1220 North, Washington, DC 20004.

[48 FR 55459, Dec. 13, 1983, as amended at 50 FR 45824, Nov. 4, 1985]

§ 908.31 Time for filing request for review.

Any person who files a request for review must do so within one year of the date of the determination for which review is sought.

§ 908.32 Review procedures.

(a) Upon receipt of a request for review, the Director of Real Estate shall compile all pertinent records maintained on the aggrieved person's application, including the following:

(1) Information on which the original determination was based, including applicable regulations;

(2) Information submitted by the applicant including the request for review and any information submitted in support of the application;

(3) Any additional information the Director of Real Estate considers relevant to a full and fair review of the application and which he obtains by request, investigation or research.

(b) The Director of Real Estate shall submit the complete file together with a summary of the facts and issues involved in the application to the Chairman of the Board of Directors of the Corporation or his or her designee ("Chairman or designee") within 30 days of receipt of the request for review.

(c) The Chairman may either review the application or designate one or more persons from the Board of Directors or from outside the Corporation to review the claim. During review the Chairman or designee(s) may consult with the Corporation's Office of General Counsel to obtain advice on legal issues arising from the claim.

§ 908.33 Final determination.

(a) The Chairman or designee(s) shall make a final determination on the claim within 45 days of receipt of the file from the Director of Real Estate. The final determination shall be in the form of Findings of Fact and Conclusions of Law and shall be sent to the aggrieved person and to the Director of Real Estate.

(b) If the applicant is determined to have been aggrieved, the Director of Real Estate shall promptly take appropriate action in accordance with the final determination.

(c) A notice of the right to judicial review shall be sent to the aggrieved person with the final determination.

PART 909—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

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AUTHORITY: 29 U.S.C. 794.

SOURCE: 51 FR 22896, June 23, 1986, unless otherwise noted.

§ 909.101 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 909.102 Application.

This part applies to all programs or activities conducted by the agency.

§ 909.103 Definitions.

For purposes of this part, the term—

"*Assistant Attorney General*" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"*Auxiliary aids*" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

"*Complete complaint*" means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

"*Facility*" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"*Handicapped person*" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(1) "Physical or mental impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alocoholism.

(2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

"*Historic preservation programs*" means programs conducted by the agency that have preservation of historic properties as a primary purpose.

"*Historic properties*" means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

"*Qualified handicapped person*" means—

(1) With respect to preschool, elementary, or secondary education services provided by the agency, a handicapped person who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency.

(2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can acheive the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(3) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(4) "Qualified handicapped person" is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 909.140.

"*Section 504*" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

"*Substantial impairment*" means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§§ 909.104—909.109 [Reserved]

§ 909.110 Self-evaluation.

(a) The agency shall, by August 24, 1987, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, until three years following the completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified, and

(2) A description of any modifications made.

§ 909.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 909.112—909.129 [Reserved]

§ 909.130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified handicapped persons to discrimination on

the basis of handicap, nor may the agency establish requirements for the programs or activites of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§§ 909.131—909.139 [Reserved]

§ 909.140 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§§ 909.141—909.148 [Reserved]

§ 909.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 909.150, no qualified handicapped person shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 909.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 909.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods*—(1) *General.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(2) *Historic preservation programs.* In meeting the requirements of § 909.150(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to handicapped persons. In cases where a physical alteration to an historic property is not required because of § 909.150(a)(2) or (a)(3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide handicapped persons into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by October 21, 1986, except that where structural changes in facilities are undertaken, such changes shall be made by August 22, 1989, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by February 23, 1987, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 909.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151-4157), as established in 41 CFR 101-19.600 to 101-19.607, apply to buildings covered by this section.

§§ 909.152—909.159 [Reserved]

§ 909.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf person (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and adminstrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 909.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§§ 909.161—909.169 [Reserved]

§ 909.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Executive Director shall be responsible for coordinating implementation of this section. Complaints may be sent to the General Counsel, Pennsylvania Avenue Development Corporaton, 1331 Pennsylvania Avenue, NW., Suite 1220 North, Washington, DC 20004-1730.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § 909.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[51 FR 22894, 22896, June 23, 1986, as amended at 51 FR 22894, June 23, 1986]

§§ 909.171—909.999 [Reserved]

PART 910—GENERAL GUIDELINES AND UNIFORM STANDARDS FOR URBAN PLANNING AND DESIGN OF DEVELOPMENT WITHIN THE PENNSYLVANIA AVENUE DEVELOPMENT AREA

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AUTHORITY: Sec. 6(8) Pennsylvania Avenue Development Corporation Act of 1972 (40 U.S.C. 875(8)).

SOURCE: 48 FR 36642, Aug. 23, 1982, unless otherwise noted.

Subpart A—General

§ 910.1 Policy.

(a) The Pennsylvania Avenue Development Corporation Act of 1972, Pub. L. 92-578, October 27, 1972, (the "Act"), (40 U.S.C. 871 *et seq.*) established the Pennsylvania Avenue Development Corporation (the "Corporation") with jurisdiction over the Pennsylvania Avenue Development Area ("Development Area"). The Development Area is generally described as an area in Washington D.C., bounded by Pennsylvania Avenue, N.W., on the south, East Executive Drive on the west, 3rd Street, N.W., on the east, and E and F Streets, N.W., on the north.

(b) Prior to creation of the Corporation, the deterioration of the Development Area had an adverse impact upon the physical, economic, and social life of Washington, D.C. The Corporation was created as the vehicle to develop, maintain, and use the Development Area in a manner suitable to its ceremonial, physical, and historic relationship to the legislative and executive branches of the Federal government, to the governmental buildings, monuments, memorials, and parks in and adjacent to that area, and to the downtown commercial core of Washington, D.C. The Corporation was directed to prepare a development plan for the Development Area and to submit that plan to the United States Congress. Congress accepted that plan and directed its implementation by the Corporation. The Corporation through a broad range of statutory powers has begun this implementation process.

(c) The Pennsylvania Avenue Plan—1974, as amended (*the "Plan"*) is a blueprint for social, economic, and architectural rejuvenation of the Development Area. Its goal is to make the Development Area once again a relevant and contributing element of Washington, D.C. With the implementation of *the Plan*, the Development Area will become a showpiece of the Nation's Capital, proudly displaying the successful joint efforts of the Corporation, other Federal and District of Columbia government agencies, and private entrepreneurs.

(d) *The Plan*, containing the goals and objectives for *development*, is supplemented by various adopted policies and programs of the Corporation. *The Plan*, in conjunction with these policies and programs, represents the basis upon which the *development* and rejuvenation of the Development Area will proceed, whether publicly or privately inspired and accomplished. These policies and programs amplify, elaborate, and refine the planning and urban design concepts expressed in *the Plan*.

§ 910.2 Purpose.

(a) Implementation of *the Plan* occurs through two component actions: public improvements construction and square development. Public improvements construction consists of implementation by the Corporation of the Public Improvements Program which is a comprehensive plan for the design and construction of public amenities in public spaces and selected thoroughfares within the Development Area. This program outlines the details of roadway and sidewalk improvements, public space configuration, and pedestrian amenities. Square development consists of design and construction of *development* projects primarily on city blocks, known as squares, within the Development Area. These *development* projects are generally pursued by private entrepreneurs with varying degrees of participation and involvement by the Corporation, through such means as land assemblage and leasing.

(b) This Part 910, together with the *Square Guidelines* applicable to the *coordinated planning area*, pertains solely to square development and specifies the controlling mechanism for implementation of *the Plan* required by Chapter Six of *the Plan*.

§ 910.3 Program administration.

(a) This Part 910, together with *Square Guidelines*, described below, provides interested parties with the urban planning and design information sufficient to understand and participate in the process of square development within the Development Area.

(1) This Part 910, General Guidelines and Uniform Standards for Urban Planning and Design of Development, sets forth the general planning and design goals and objectives which govern the implementation of *the Plan*, specifies standards which are uniformly applicable to all *developments* throughout the Development Area, and provides a glossary of defined terms applicable to this part as well as *Square Guidelines*.

(2) *Square Guidelines* specifies detailed urban planning and design requirements and recommendations which are applicable to each particular *coordinated planning area*, a *coordinated planning area* being a square, a portion of a square, or a combination of squares. These requirements and recommendations set forth intentions and refinements of *the Plan* in light of the identified Planning and Design Concerns specified in Subpart B of this Part 910. Each set of *Square Guidelines* is adopted by the Board of Directors, issued by the Chairman, and is available, upon request, at the Corporation's office.

(3) *Square Guidelines* are developed in the context of the existing environment. Several provisions in the *Square Guidelines* are, therefore, established on the basis of certain assumptions in terms of existing buildings, a particular traffic pattern and roadway configuration, a market condition for a particular land use, etc. In the event of a major change or casualty which would render it impossible or impracticable to meet certain requirements of *Square Guidelines*, the Corporation would expect to develop and issue up-to-date *Square Guidelines*. This statement does not, of course, preclude the Corporation from issuing amendments to *Square Guidelines* from time to time on any other basis.

(b) Pursuant to section 7(b) of the Act, each proposal for *development* within the Development Area must be submitted to the Corporation to determine its consistency with *the Plan*. The Corporation's adopted development policy, entitled "Development Policies and Procedures," sets forth the process for this determination. In determining whether a *development* proposal is consistent with *the Plan*, the Corporation shall review the proposal against all adopted Corporation programs, policies, and regulations, including:

(1) This Part 910.

(2) Square Guidelines.

(3) Development Policies and Procedures.

(4) Historic Preservation Plan.

(5) Energy Guidelines.

(6) Side Street Improvements Program.

(7) Policy on Environmental Quality and Control (36 CFR 907).

(8) Pennsylvania Avenue Lighting Plan.

(9) Public Improvements Program.

(10) Affirmative Action Policy and Procedure (36 CFR 906).

(11) Policy and Procedures to Facilitate Successful Relocation of Businesses and Residents within the Pennsylvania Avenue Development Area.

(12) All other programs, policies, and regulations that may be approved and adopted by the Board of Directors from time to time.

(c) Pursuant to the Act, Federal and District of Columbia agencies and departments may exercise such existing authority and lawful powers over urban planning and design features of *development* as are consistent with *the Plan*. No department or agency may release, modify, or depart from any feature of *the Plan* without the prior approval of the Corporation.

Subpart B—Urban Planning and Design Concerns

§ 910.10 General.

To facilitate review of each *development* proposal in light of the identified urban planning and design goals of *the Plan*, the following urban planning and design concerns will be the basis upon which the evaluation of such proposals will be made. These concerns are also more specifically reflected in Subpart C of this Rule, and in the requirements and recommendations in *Square Guidelines*.

(a) Comprehensive planning and design;

(b) Development density;

(c) Urban design of Washington, D.C.;

(d) Historic preservation;

(e) New development design;

(f) Land use;

(g) Pedestrian circulation sytems; and

(h) Vehicular circulation and storage systems.

§ 910.11 Comprehensive urban planning and design.

(a) All new *development* is conceived as an integral part of its surroundings.

which include the remainder of the Development Area, the Mall, the Federal Triangle, and the District's downtown, and should support Pennsylvania Avenue's function as a bridge between the monumental Federal core to the south and the District's downtown to the north.

(b) All *development* shall be planned and designed to accommodate the requirements and needs of historic preservation, affirmative action, business relocation, and other concerns which will affect the overall planning and design of a *development*.

(c) The design of any *development* shall take into account *the Plan's* proposed future treatment of buildings, squares, and pedestrian spaces in the immediate surrounding area.

(d) The design of any *development* shall be coordinated with the massing, architectural design, servicing, pedestrian amenities, and uses of nearby *development* as prescribed under *the Plan*.

(e) Any *development* adjacent to F Street, N.W. shall be accomplished in a manner that will strengthen F Street as a retail core of Washington, D.C.

(f) Any *development* along Pennsylvania Avenue shall be designed so as to support the transformation of the Avenue into an attractive and pleasant place for residents and visitors alike, offering pleasant places to stroll, rest, sit and talk, eat, and shop.

(g) All *development* within a *coordinated planning area* shall, to the maximum extent possible, be integrated with regard to the off-street loading and servicing, pedestrian features.

§ 910.12 Development density.

(a) Land would be developed to the fullest extent appropriate in terms of uses, economics, and design so that the city's economic life and tax base can be enhanced.

(b) New *development* shall be designed to achieve maximum development density within the building envelope delineated by specific height restrictions, but shall also establish a compatible and appropriate scale for historic preservation, residential and other uses, and other urban design elements.

(c) Development density is limited by the Zoning Regulations of the District of Columbia and may be further restricted by the Corporation in specific *coordinated planning areas*, provided that any lower density would be economically feasible. Generally, *the Plan* is structured to create high density *development* west of the FBI and lower density *development* east of the FBI.

(d) The density of new *development* should bring new economic life—jobs, shopping, and business opportunities—to Pennsylvania Avenue, while also reinforcing existing activity both on the Avenue and in the adjacent downtown, both within and beyond the Development Area.

§ 910.13 Urban design of Washington, D.C.

(a) Pennsylvania Avenue's unique role as the physical and symbolic link between the White House and the U.S. Capitol should be reinforced by new *development* along it.

(b) To reinforce and enrich the legacy of the L'Enfant Plan, the primary function of new *development* in the Development Area is to define open spaces and plazas, or to reinforce vistas along major streets and thoroughfares.

§ 910.14 Historic preservation.

(a) The Development Area is located almost entirely within the Pennsylvania Avenue National Historic Site, which was established to preserve the exceptional values of Pennsylvania Avenue and its environs in commemorating or illustrating the history of the United States. The Pennsylvania Avenue Area achieves national historic significance because of both its ceremonial role in the life of the nation and its social and economic role in the life of the residents of Washington for more than a century.

(b) The Historic Preservation Plan of the Corporation sets forth the adopted policy of the Corporation on historic preservation and *development* within the Development Area must be consistent with this policy.

(c) New construction adjacent to historic structures will be required to take into account the qualities of the adjacent structures (with regard to height, scale, proportion, rhythm, texture, materials, architectural detail, and the amount of variety among the structures with respect to these qualities as well as style and date of erection) to ensure that these structures maintain their historic or architectural integrity, but will not necessarily be required to conform to them.

(d) Wholly new construction and new construction in conjunction with preservation will, where appropriate, take into account the historic buildings to remain, aiming for the highest quality of contemporary design, consistent with the goals and objectives of the Historic Preservation Plan.

§ 910.15 New development design.

(a) All new *development* shall represent the best contemporary architectural and urban planning concepts.

(b) Where new *development* includes or relates to historic or architecturally meritorious buildings which are to be preserved, the design of the new *development* should be aimed at retaining as much of the significant fabric of the Development Area as is possible consistent with the goals of *the Plan*.

§ 910.16 Land use.

(a) *Development* within the Development Area shall provide, and stimulate in neighboring areas, more lively and varied shopping, cultural, entertainment, and residential opportunities, as well as high quality office uses.

(b) That portion of the Development Area west of the FBI Building is designated for commercial *development*, primarily office and hotel uses with attendant retail and service uses. That portion of the Development Area east of the FBI Building is designated for *development* with residential uses, office, institutional and entertainment uses supported by service and retail uses.

(c) The kinds of uses and their location within the Development Area shall be directly related to creating a lively atmosphere and to promoting an active street life throughout the day, evening, and weekend.

(d) Introduction or expansion of retail uses shall be encouraged as both reinforcement of existing retail uses and creation of new retail activities.

(e) While recognized as important to the commercial life of any inner city, uses that do not generate lively activities are discouraged from locating along those street fronts within the Development Area which are considered major pedestrian thoroughfares.

§ 910.17 Pedestrian circulation system.

(a) An efficient, pleasant, and stimulating pedestrian circulation system shall be developed to link the components of the Development Area with the Mall and the city's downtown.

(b) Pedestrian circulation systems shall be designed to provide pedestrian comfort and convenience, to create more linear footage of *storefront*, to encourage recognition of the location of various METRO stops or other mass transit locations, and to link various historic and architecturally significant buildings, sites, and monuments which are scattered throughout and beyond the Historic Site.

(c) Curb cuts across the north sidewalk areas of Pennsylvania Avenue shall be prohibited in order to reinforce its importance as the major pedestrian thoroughfare of the Development Area.

§ 910.18 Vehicular circulation and storage systems.

(a) Improvement of the existing vehicular storage and circulation system is necessary in order to create the balanced transportation system called for in *the Plan*, which recognizes the need to maintain air quality, to encourage the use of mass transit, and to provide sufficient off-street parking and loading to make development economically viable.

(b) The general policies of the Corporation are as follows:

(1) To reduce impedance to traffic movement created by service vehicles by requiring well-integrated off-street loading facilities in terms of location of loading berths and access points on a block-by-block basis;

(2) To control the number of vehicles in the Development Area by limiting the number of parking spaces per *development*; and

(3) To encourage the use of public transportation by linking new *development* to transit stops through the system of pedestrian ways.

Subpart C—Standards Uniformly Applicable to the Development Area

§ 910.30 General.

In addition to the specific requirements and recommendations contained in *Square Guidelines* for the applicable *coordinated planning area*, the Standards set forth in this Subpart C are uniformly applicable to any *development* within the Development Area.

§ 910.31 High architectural quality.

Development must maintain a uniformly high standard of architecture, representative of the best contemporary design and planning concepts. Great care and sensitivity must be shown in the architectural treatment of new buildings, particularly in terms of massing, facade design (including materials, composition, and detailing), the ground floor and sidewalk pedestrian environment, interior public spaces, and provisions for pedestrian and vehicular *access*. Special design considerations for each *coordinated planning area* are set forth in *Square Guidelines*.

§ 910.32 Historic preservation.

Rehabilitation of buildings within the Development Area, which, according to *the Plan* and the Historic Preservation Plan of the Corporation, are specified for preservation, shall be acomplished (a) in accordance with the Secretary of the Interior's "Standards for Historic Preservation Projects': (36 CFR 68), and (b) consultation with the State Historic Preservation Officer for the District of Columbia.

§ 910.33 Off-street parking.

(a) Off-street parking as a principal use is prohibited, although off-street parking as an accessory use in a *development* (such as a below-grade parking garage) is permitted.

(b) All parking spaces shall be located below grade level.

(c) The minimum number of parking spaces shall be provided in accordance with D.C. Zoning Regulations.

(d) The maximum number of parking spaces permitted by PADC for a *development* may not exceed the aggregate of the number of spaces allowed for each use within the *development*. The schedule of limitations for parking spaces is as follows:

(1) Hotel: One parking space for each four sleeping rooms or suites;

(2) Places of public assemblage other than hotels: (i.e., arena, armory, theater, auditorium, community center, convention center, concert hall, etc.) one parking space for each ten seats of occupancy capacity for the first 10,000 seats plus one for each 20 seats above 10,000: Provided, that where seats are not fixed, each seven square feet of *gross floor area* usable for seating shall be considered one seat;

(3) Retail, trade, and service establishments: one parking space for each 750 square feet of *gross floor area;*

(4) Residential: One parking space for each 1.2 units;

(5) Offices: One parking space for each 1,800 square feet of *gross floor area*.

§ 910.34 Accommodations for the physically handicapped.

(a) Every *development* shall incorporate features which will make the *development* accessible by the physically handicapped. The standards in the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by the Physically Handicapped," published by the American National Standards Institute, Inc. (ANSI A 117.1-1961 (1971)), are recommended.

(b) Where a *development* includes a historic structure, the Advisory Council on Historic Preservation's policy, "Supplementary Guidance—Handicapped Access to Historic Properties," (45 FR 9757, Feb. 13, 1980), should be observed.

§ 910.35 Fine arts.

Fine arts, including sculpture, paintings, decorative windows, bas-reliefs, ornamental fountains, murals, tapestries, and the like, should be included in each *development*. PADC encourages commissions for original works of art which are appropriate for the *development*. For information and guidance, a reasonable expenditure for fine arts is deemed to be one half of one percent of the total construction cost of the *development*.

§ 910.36 Energy conservation.

All new *development* shall be designed to be economical in energy consumption. The Energy Guidelines of the Corporation, and the District of Columbia Energy Conservation Code Act of 1979 and its implementing regulations set forth the appropriate standards to be observed.

§ 910.37 Fire and life safety.

As a complementary action to satisfying required District of Columbia codes related to fire safety, it is highly recommended that all new *development* be guided by standards of the NFPA Codes for fire and life safety and that all buildings be equipped with an approved sprinkler system.

§ 910.38 Building exterior illumination.

Exterior illumination of a building shall be in conformance with the standards specified in the Pennsylvania Avenue Lighting Plan of the Corporation.

Subpart D—Glossary of Terms

§ 910.50 General.

The definitions appearing in this Glossary of Terms are applicable to this part 910 and to the *Square Guidelines*. In addition, definitions appearing in section 1201 of the Zoning Regulations of the District of Columbia are also applicable. Where a conflict between this subpart and section 1201 of the Zoning Regulations arises in terminology or interpretation, this subpart shall be controlling.

§ 910.51 Access.

Access, when used in reference to parking or loading, means both ingress and egress.

§ 910.52 Buildable area.

Buildable area means that portion of the established *development parcel* which can be devoted to buildings and structures. Generally, this area is bounded by any applicable *building restriction lines*, right-of-way lines and *development parcel* lines. It shall be the *buildable area* of a *development parcel* rather than "lot," as it is established in the D.C. Zoning Regulations, that will be utilized to establish the maximum *gross floor area* of a *development* within specified portions of the Development Area.

§ 910.53 Building restriction line.

Building restriction line means a line beyond which an exterior wall of any building of a *development* may not be constructed or project, except that architectural articulation, minor architectural embellishments and subsurface projections are permitted.

§ 910.54 Build-to height.

Build-to height means a specified minimum *height of development* to which the exterior wall of a building in a development must rise. Minor deviations from the *build-to height* for architectural embellishments and articulations of the cornice and roof level are permitted, unless otherwise prohibited by the applicable Square Guidelines or the District of Columbia's codes and regulations.

§ 910.55 Build-to line.

Build-to line means a line with which the exterior wall of a building in a *development* is required to coincide. Minor deviations from the *build-to line* for such architectural features as *weather protection*, recesses, niches, ornamental projections, entrance bays, or other articulations of the facade are permitted, unless otherwise prohibited by the applicable *Square Guidelines* or the District of Columbia's codes and regulations.

§ 910.56 Coordinated planning area.

Coordinated planning area means a Square, portion of a Square, or group of Squares that is composed of one or more *development parcels* and is treated as a unit under *Square Guidelines* in order to achieve comprehensive planning and design.

§ 910.57 Curb-cut.

Curb-cut means that portion of the curb and sidewalk over which vehicular *access* is allowed. The number of *access* lanes for each *curb-cut* shall be specified in each set of *Square Guidelines.*

§ 910.58 Development.

Development means a structure, including a building, planned unit development, or project resulting from the process of planning, land acquisition, demolition, construction, or *rehabilitation* consistent with the objectives and goals of *the Plan.*

§ 910.59 Development parcel.

Development parcel means an area of land established by the Corporation to be a minimum site on which a *development* may occur under *the Plan* and any applicable *Square Guidelines* adopted by the Corporation. A *development parcel* does not need to be under the ownership of a single individual or entity. A proposal for a *development parcel* may be formulated by any number of individuals or entities, so long as it accommodates the needs and requirements of affirmative action, historic preservation and other policies of the Corporation, and at the same time responds to the goals of comprehensive planning and design for that particular *coordinated planning area.*

§ 910.60 Gross floor area.

Gross floor area is defined in section 1201, Zoning Regulations of the District of Columbia and generally means the sum of the gross horizontal areas of the several floors from the ground floor up of all buildings of a *development* occurring on a lot. *Gross floor area* shall be measured from the exterior faces of exterior walls and from the center line of walls separating two buildings.

§ 910.61 Height of development.

Height of development means the vertical distance measured from a specified point at the curb level to the highest point of the roof or parapet of the *development*, whichever is higher, exclusive of all *roof structures* except as otherwise specified.

§ 910.62 The Plan.

The Plan means The Pennsylvania Avenue Plan—1974, as amended, and prepared pursuant to Pub. L. 92-578, 86 Stat. 1266 (40 U.S.C. 871), and the document which sets forth the *development* concepts upon which this part 910 and *Square Guidelines* are based.

§ 910.63 Rehabilitation.

Rehabilitation means the process of adapting improvements on real property to make possible an efficient contemporary use achieved by means of a combination of construction, repair, or alteration, as well as *restoration* and *replication* of those portions and features of the property that are significant to its historic, architectural, and cultural values, consistent with the goals and objectives of *the Plan.*

§ 910.64 Replication.

Replication means the process of using modern methods and materials to reproduce the exact form and details of a vanished building, structure, object, or portion thereof, as it appeared at a particular period of time, and consistent with the objectives and goals of *the Plan.*

§ 910.65 Restoration.

Restoration means the process of accurately recovering the form and details of a property as they appeared at a particular period of time by means of removal of later work and the replacement of missing original work, consistent with the objectives and goals of *the Plan.*

§ 910.66 Sidewalk setback.

Sidewalk setback means that area between a *building restriction line* and the right-of-way of a street into which projections except architectural articulations, minor architectural embellishments, and subsurface structures, are prohibited. The area is to be dedicated to open space activities related to the public improvements program of the Pennsylvania Avenue Development Corporation. Subsurface structures may intrude into the area if they are in compliance with the *Square Guidelines.*

§ 910.67 Square guidelines.

Square Guidelines establish the Corporation's specific intent with regard to design and development objectives relative to each individual *coordinated planning area.*

§ 910.68 Storefront.

Storefront means the street level frontage relating to a single establishment.

§ 910.69 Structural bay.

Structural bay means the distance or span from one vertical structural member fronting on a street to the immediately adjacent vertical structural member fronting on the same street.

§ 910.70 Vault.

A *vault* means an enclosure of space beneath the surface of the public space or *sidewalk setback,* except that the term *vault* shall not include public utility structures.

§ 910.71 Weather protection.

Weather protection means a seasonal or permanent shelter to protect pedestrians from sun or precipitation, consisting of arcades, canopies, awnings, or other coverings.

CHAPTER X—[RESERVED]

EDITORIAL NOTE: Chapter X, Commission of Fine Arts was vacated at 51 FR 23056, June 25, 1986. The existing regulations formerly codified as parts 1000 and 1002 were redesignated as parts 2105 and 2106, respectively, in title 45, chapter XXI.

CHAPTER XI—ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

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PART 1120—PUBLIC AVAILABILITY OF INFORMATION

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AUTHORITY: 5 U.S.C. 552, the Freedom of Information Act, as amended.

SOURCE: 45 FR 80976, Dec. 8, 1980, unless otherwise noted.

Subpart A—General

§ 1120.1 Purpose and scope of this part.

This part contains the general rules of the Architectural and Transportation Barriers Compliance Board for public access to Board records. These regulations implement 5 U.S.C. 552, the Freedom of Information Act, as amended, and the policy of the Board. It is the Board's policy to disseminate information on matters of interest to the public and to disclose on request all information contained in records in its custody insofar as is compatible with the discharge of its responsibilities and consistent with the law. This part sets forth generally the categories of records accessible to the public, the types of records subject to prohibitions or restrictions on disclosure, and the places and procedures to obtain information from records in the custody of the A&TBCB.

§ 1120.2 Definitions.

For the purposes of this part:

(a) *A&TBCB* or *Board* means the Architectural and Transportation Barriers Compliance Board.

(b) *A&TBCB record* or *record* means any document, writing, photograph, sound or magnetic recording, drawing or other similar thing by which information has been preserved, from which the information can be retrieved and copied, and which is, was, or is alleged to be under the control of the A&TBCB.

(1) The term includes—

(i) Informal writings such as handwritten notes and drafts;

(ii) Information preserved in a form which must be translated or deciphered by machine in order to be intelligible to humans;

(iii) Records which were created or acquired by the A&TBCB, its members, its employees, its members' employees, or persons acting on behalf of its members, by use of A&TBCB funds or in the course of transacting official business for the A&TBCB.

(2) The term does not include—

(i) Materials which are legally owned by an A&TBCB member, employee, or member's employee or representative in his or her purely personal capacity; and

(ii) Materials published by non-Federal organizations which are readily available to the public, such as books, journals, standards, and periodicals available through reference libraries, even if such materials are in the A&TBCB's possession.

(c) The terms *agency, person, party, rule, rulemaking, order,* and *adjudication* have the meanings given in 5 U.S.C. 551, except where the context demonstrates that a different meaning is intended, and except that for purposes of the Freedom of Information Act the term *agency* as defined in 5 U.S.C. 551 includes any executive department, military department, Government corporation, Government controlled corporation, the United States Postal Service, or other establishment in the executive branch of the Government (including the Executive Office of the President) or any independent regulatory agency.

(d) A government record *under the control of the A&TBCB* means that the record is subject to the free disposition of the A&TBCB. This includes keeping the record available for governmental use as required and protecting, preserving, and exercising such control over it as may be necessary for that purpose. Control of a record is not synonymous with, and does not require, actual physical possession of the record.

(e) *Request* means a request to inspect or obtain a copy of one or more records.

(f) *Requestor* means any person who submits a request to the A&TBCB.

(g) *Public member* means a member appointed by the President from among members of the general public.

(h) *Direct Costs* means those expenditures which an agency actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(i) *Search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Agencies should ensure that searching for material is done in the most efficient and least expensive manner so as to minimize costs for both the agency and the requester. For example, agencies should not engage in line-by-line search when merely duplicating an entire document would prove the less expensive and quicker method of complying with a request. *Search* should be distinguished, moreover, from *review* of material in order to determine whether the material is exempt from disclosure (see paragraph (k) of this section). Searches may be done manually or by computer using existing programming.

(j) *Duplication* refers to the process of making a copy of a document necessary to respond to an FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others. The copy provided must be in a form that is reasonably usable by requesters.

(k) *Review* refers to the process of examining documents located in response to a request that is for a commercial use (see paragraph (l) of this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(l) *Commercial Use Request* refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, agencies must determine the use to which a requester will put the documents requested. Moreover, where an agency has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, agencies should seek additional clarification before assigning the request to a specific category.

(m) *Educational Institution* refers to a preschoool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(n) *Non-Commercial Scientific Institution* refers to an institution that is not operated on a *commercial* basis as that term is referenced in paragraph (l) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(o) *Representative of the News Media* refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term *news* means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of *news*) who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive.

Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of *freelance* journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but agencies may also look to the past publication record of a requester in making this determination.

[45 FR 80976, Dec. 8, 1980, as amended at 52 FR 43195, Nov. 10, 1987; 55 FR 2519, Jan. 25, 1990]

§ 1120.3 Existing records.

All existing A&TBCB records are subject to routine destruction according to standard record retention schedules.

Subpart B—Published Information

§ 1120.5 Information published in the FEDERAL REGISTER.

(a) *General.* In accordance with the provisions of 5 U.S.C. 552(a)(1), basic information concerning the organization, operations, functions, substantive and procedural rules and regulations, officials, office locations, and allocation of responsibilities for functions and programs of the A&TBCB is published in the FEDERAL REGISTER for the guidance of the public. This information includes—

(1) Description of the A&TBCB's organization and the established places at which, the employees from whom, and the methods whereby the public may obtain information, make submittals or requests, or obtain decisions;

(2) Statements of the general course and method by which the A&TBCB's functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(3) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(4) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the A&TBCB, and

(5) Each amendment, revision, or repeal of the foregoing. Indexes to the FEDERAL REGISTER are published in each daily issue and compiled currently on a monthly, quarterly, and annual basis. Copies of the FEDERAL REGISTER and its indexes are available in many libraries and may be purchased from

the Superintendent of Documents, Government Printing Office, Washington, DC 20402. No formal request to examine documents in the FEDERAL REGISTER is necessary to inspect them at the place where they are kept. Materials incorporated by reference in the FEDERAL REGISTER are available for inspection in A&TBCB offices.

(b) *Code of Federal Regulations.* Title 36 of the *Code of Federal Regulations,* which is republished and updated annually, contains a compilation of documents published by the A&TBCB in the FEDERAL REGISTER which set forth substantive and procedural rules and regulations of the A&TBCB and statements of general policy or interpretations of general applicability formulated and adopted by the Board. Copies of the *Code of Federal Regulations* are available in many libraries and may be purchased from the Superintendent of Documents. Reference copies maintained in offices of the A&TBCB are available for examination without formal request.

(c) *Effect of nonpublication.* Except to the extent that a person has actual and timely notice of its terms, no person may in any manner be required to resort to, or be adversely affected by, any procedure or matter required to be published in the FEDERAL REGISTER, but not so published. For the purposes of this paragraph, material that is reasonably available to the class of persons affected by it is considered to be published in the FEDERAL REGISTER if it has been incorporated by reference in the FEDERAL REGISTER with the approval of the Director of the Federal Register.

§ 1120.6 Information in A&TBCB publications.

(a) *General.* Copies of information material shall be available upon oral or written request so long as an adequate supply exists. These informational materials include press releases, pamphlets, and other materials ordinarily made available to the public without cost as part of a public information program, and reprints of individual parts of the *Code of Federal Regulations* or FEDERAL REGISTER relating to programs affecting substantial segments of the general public. Copies of informational publications of the A&TBCB which may be purchased from the Superintendent of Documents may be inspected in those offices of the A&TBCB in which reference copies are available. Compliance with the formal procedures provided in this part for obtaining access to A&TBCB records is not necessary for access to the materials described in this paragraph.

(b) *Published indexes.* The informational publications available from the A&TBCB may include indexes to materials published or contained in its records. They will include the current indexes required by the Freedom of Information Act to be maintained and made available for inspecting and copying, except as otherwise provided by published order, as noted below. These indexes provide identifying information for the public as to—

(1) Final opinions and orders made in the adjudication of cases;

(2) Statements of policy and interpretations adopted but not published in the FEDERAL REGISTER; and

(3) Administrative staff manuals and instructions to staff that affect a member of the public.

As promptly as possible after adoption of this part, these indexes will be made available to members of the public. Thereafter, updated indexes or supplements shall be published at least quarterly. However, the Board may determine by order published in the FEDERAL REGISTER that publication of an index is unnecessary and impracticable. In that case the Board shall provide copies of the index on request at a cost not to exceed the direct cost of duplication.

Subpart C—Records Available for Public Inspection and Copying, Documents Published and Indexed

§ 1120.11 Records available for inspection.

Except for those categories of materials listed in paragraph (a) of this section, paragraphs (a) (1) through (9) of § 1120.41 the following materials are available for public inspection and copying during normal business hours at the Washington office of the A&TBCB:

(a) Final opinions and orders made in the adjudication of cases;

(b) Statements of policy and interpretations which have been adopted under the authority of the A&TBCB and are not published in the FEDERAL REGISTER;

(c) Administrative staff manuals and instructions to staff that affect a member of the public;

(d) A record of the final votes of each member of the Board in every Board proceeding;

(e) Current indexes providing identifying information for the public as to the materials made available under paragraphs a–d of this section.

(f) All papers and documents made a part of the official record in administrative proceedings conducted by the A&TBCB in connection with the issuance, amendment, or revocation of rules and regulations or determinations having general applicability or legal effect with respect to members of the public or a class of the public.

(g) After a final order is issued in any adjudicative proceeding conducted by the A&TBCB, all papers and documents made a part of the official record of the proceeding. (The official docket is kept in the office of the administrative law judge hearing the case until a final order is issued.)

§ 1120.12 Indexes to certain records.

Current indexes are normally available to the public in published form as provided in § 1120.11. These indexes, whether or not published, are made available for inspection and copying on request. If published copies of a particular index are at any time not available or if publication of the index has been determined to be unnecessary and impracticable by order published in the FEDERAL REGISTER, copies of the index will be furnished on request. (See 1120.6(b), *Published indexes.*)

§ 1120.13 Effect of nonavailability.

Any material listed in paragraph (a) of this section that is not indexed as required by § 1120.11(e) and § 1120.12, may not be cited, relied on, or used as precedent by the Board to adversely affect any member of the public unless the person against whom it is cited, relied on, or used has had actual and timely notice of the material.

Subpart D—Information Available Upon Request

§ 1120.21 Policy on disclosure of records.

(a) It is the policy of the A&TBCB to make information available to the public to the greatest extent possible in keeping with the spirit of the Freedom of Information Act. Therefore, all records of the A&TBCB, except those that the A&TBCB specifically determines must not be disclosed in the national interest, for the protection of private rights, or for the efficient conduct of public business to the extent permitted by the Freedom of Information Act, are declared to be available for public inspection and copying as provided in this part. Each member and employee of the A&TBCB is directed to cooperate to this end and to make records available to the public promptly and to the fullest extent consistent with this policy. A record may not be withheld from the public solely because its release might suggest administrative error or embarrass a member or employee of the A&TBCB.

(b) Subject to § 1120.51, any nonexempt A&TBCB record is available to the public upon request regardless of whether the requestor shows any justification or need for the record.

(c) An A&TBCB office may waive the procedures on this subpart in favor of the requestor, for reasons of the public interest, simplicity, or speed.

(d) If a requested record contains both exempt and nonexempt material, the nonexempt material shall be disclosed, after the exempt material has been deleted in accordance with § 1120.42.

§ 1120.22 Requests to which this subpart applies.

(a) This subpart applies to any written request (other than a request made by another Federal agency) received by the A&TBCB, whether or not the request cites the Freedom of

Information Act, 5 U.S.C. 552, except with respect to records for which a less formal disclosure procedure is provided specifically in this part.

(b) Any written request to the A&TBCB for existing records prepared by the A&TBCB for routine public distribution, *e.g.*, pamphlets, copies of speeches, press releases, and educational materials, shall be honored. No individual determination under § 1120.32 is necessary in these cases, since preparation of the materials for routine public distribution itself constitutes that a determination that the records are available to the public.

(c) This subpart applies only to records that exist at the time the request for information is made. (See § 1120.3, *Existing records.*)

§ 1120.23 Where requests for agency records must be filed.

A written request for records must be filed with the A&TBCB Freedom of Information Officer, Suite 501, 1111 18th Street NW., Washington, DC 20036. Requests may be mailed to that address or filed in person at that address during the A&TBCB's normal business hours.

[45 FR 80976, Dec. 8, 1980, as amended at 55 FR 2520, Jan. 25, 1990]

§ 1120.24 Misdirected written requests; oral requests.

(a) The A&TBCB cannot assure that a timely for satisfactory response under this subpart will be given to written requests that are addressed to A&TBCB offices, members, or employees other than the Freedom of Information Officer listed in § 1120.23. Any A&TBCB member or employee who receives a written request for inspection or disclosure of A&TBCB records must promptly forward a copy of the request to the Freedom of Information Officer, by the fastest practicable means, and must, if appropriate, commence action under § 1120.32.

(b) While A&TBCB members and employees will attempt in good faith to comply with oral requests for inspection or disclosure of A&TBCB records, by telephone or otherwise, these requests are not required to be processed in accordance with this subpart.

§ 1120.25 Form of requests.

A request must be in writing, must reasonably describe the records sought in a way that will permit their identification and location, and must be addressed to the address set forth in § 1120.23, but otherwise need not be in any particular form. Each request under the Freedom of Information Act should be clearly and prominently identified by a legend on the first page, such as "Freedom of Information Act Request." The envelope in which the request is sent should be prominently marked with the letters "FOIA." It is helpful, but not necessary, for the requestor to include his or her phone number and the reason for the request. A request may state the maximum amount of fees which the requester is willing to pay. Under § 1120.33(d), the failure to state willingness to pay fees as high as are anticipated by the A&TBCB will delay running of the time limit and delay processing of the request, if the responsible official anticipates that the fees chargeable may exceed $250.00.

[45 FR 80976, Dec. 8, 1980, as amended at 52 FR 43195, Nov. 10, 1987]

§ 1120.26 Deficient descriptions.

(a) If the description of the records sought in the request is not sufficient to allow the A&TBCB to identify and locate the requested records, the office taking action under § 1120.32 must notify the requestor (by telephone when practicable) that the request cannot be further processed until additional information is furnished.

(b) The A&TBCB must make every reasonable effort to assist the requestor in formulating his or her request. If a request is described in general terms (*e.g.*, all records having to do with a certain area), the A&TBCB office taking action under § 1120.32 may communicate with the requestor (by telephone when practicable) with a view toward reducing the administrative burden of processing a broad request and minimizing the fee payable by the requestor. Such attempts must not be used as a means to discourage requests, but rather as a means to help identify with more specificity the records actually sought.

§ 1120.31 A&TBCB receipt of requests; responsibilities of Freedom of Information Officer.

(a) Upon receipt of a written request, the Freedom of Information Officer must mark the request with the date of receipt and must attach to the request a control slip indicating the Request Identification Number and other pertinent administrative information. The Freedom of Information Officer must immediately forward the request and control slip to the A&TBCB office which the FOIA Officer believes to be responsible for maintaining the records requested. The Freedom of Information Officer must retain a full copy of the request and control slip and must monitor the handling of the request to ensure a timely response.

(b) The Freedom of Information Officer must maintain a file concerning each request received. The file must contain a copy of the request, initial and appeal determinations, and other pertinent correspondence and records.

(c) The Freedom of Information Officer must collect and maintain the information necessary to compile the reports required by 5 U.S.C. 552(d).

§ 1120.32 A&TBCB action on requests.

(a) The FOIA Officer is delegated the authority to issue initial determinations concerning records which he or she believes are in the custody of a Board member, an employee of a member's agency, or an employee of a public member. When the FOIA Officer receives such a request, he or she shall forward it to the member, employee of a member agency, or employee of a public member whom the FOIA Officer believes to have custody of the records, requesting the records. The person to whom the request is forwarded shall, within three days of receipt of the FOIA Officer's request, either furnish the records requested to the FOIA Officer or inform the FOIA Officer of the time when they will be furnished. The FOIA Officer shall then determine whether or not to disclose the documents. For purposes of such requests and their processing under this subpart, the FOIA Officer is considered the office handling the requests.

(b) Heads of staff offices are delegated the authority to issue initial determinations, other records which are in their respective custody.

(c) Whenever an A&TBCB office receives a request forwarded by the FOIA Officer, the office should:

(1) Take action under § 1120.26, if required, to obtain a better description of the records requested;

(2) Locate the records as promptly as possible, or determine that:

(i) The records are not known to exist; or

(ii) They are located at another A&TBCB office; or

(iii) They are located at another Federal agency and not possessed by the A&TBCB.

(3) When appropriate, take action under § 1120.53(b) to obtain payment or assurance of payment;

(4) Determine which of the requested records legally must be withheld, and why (see § 1120.42(b), *Release of exempt documents*);

(5) Of the requested records which are exempt from mandatory disclosure but which legally may be disclosed (see § 1120.42(a)), determine which records will be withheld, and why;

(6) Issue an initial determination within the allowed period (see § 1120.31), specifying (individually or by category) which records will be disclosed and which will be withheld, and signed by a person authorized to issue the determination under paragraph (a) of this section (see § 1120.33, *Initial denials of requests*);

(7) Furnish the Freedom of Information Officer a copy of the determination; and

(8) If the determination denies a request, furnish the Freedom of Information Officer the name of the A&TBCB member(s) or employee(s) having custody of the records and maintain the records in a manner permitting their prompt forwarding to the General Counsel upon request if an appeal from the initial denial is filed. (See also § 1120.34.)

(d) If it appears that some or all of the requested records are not in the possession of the A&TBCB office which has been assigned responsibility for responding to the request but may be in the possession of some A&TBCB

office, the responding office must so inform the Freedom of Information officer immediately.

(e) An initial determination to disclose documents must provide the requested documents or provide the opportunity to inspect and/or obtain copies of the documents.

§ 1120.33 Time allowed for initial action on requests.

(a) Except as otherwise provided in this section, as soon as possible and not later than the tenth working day after the day on which the Freedom of Information Officer receives a request for records, the A&TBCB office responsible for responding to the request must issue a written determination to the requestor stating which of the requested records, will, and which will not, be released and the reason for any denial of a request.

(b) The period of 10 working days is measured from the date the request is first received and logged in by the Freedom of Information Officer.

(c) There is excluded from the period of 10 working days (or any extension) any time which elapses between the date that a requestor is notified by the A&TBCB under § 1120.26 that his or her request does not reasonably identify the records sought, and the date that the requestor furnishes a reasonable identification.

(d) There is excluded from the period of 10 working days (or any extension) any time which elapses between the date that a requestor is notified by an A&TBCB office under § 1120.53(b) that prepayment of fees is required, and the date that the requestor pays (or makes suitable arrangements to pay) the charges.

(e) The A&TBCB office taking action under § 1120.31 may extend the basic 10-day period established under paragraph (a) of this section by a period not to exceed 10 additional working days if—

(1) The office notifies the Freedom of Information Officer;

(2) The office notifies the requestor in writing within the basic 10-day period stating the reasons for the extension and the date by which the office expects to be able to issue a determination;

(3) The extension is reasonably necessary to properly process the particular request; and

(4) One or more of the following unusual circumstances require the extension:

(i) There is a need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) There is a need to search for, collect, and/or appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) There is need for consultation with another agency having a substantial interest in the determination of the request or among two or more components of the A&TBCB. The office must conduct the consultation with all practicable speed.

(f) Should the A&TBCB fail to issue a determination within the 10-day period or any authorized extension as to an initial request, or during the period for consideration of an appeal, the requestor shall be deemed to have exhausted his or her administrative remedies with respect to such.

In the latter situation, the requestor may commence an action in an appropriate Federal district court to obtain the records.

§ 1120.34 Initial denials of requests.

(a) An initial denial of a request may be issued only for the following reasons:

(1) The record is not under the A&TBCB's control;

(2) The record has been published in the FEDERAL REGISTER or is otherwise published and available for sale;

(3) A statutory provision, provision of this part, or court order requires that the information not be disclosed;

(4) The record is exempt from mandatory disclosure under 5 U.S.C. 552(b) and the responding office has decided not to disclose it under §§ 1120.41 and 1120.42;

(5) The record is believed to be in the A&TBCB's custody but has not yet been located. (See paragraph (f) of this section.)

(b) Each initial denial of a request shall—

(1) Be written, signed, and dated;

(2) Contain a reference to the Request Identification Number;

(3) Identify the records that are being withheld (individually or, if the denial covers a large number of similar records, by described category); and

(4) State the basis for denial of each record of category of records or any reasonably segregable portion(s) thereof being withheld.

(c) If the issuance of the determination to deny a request was directed by some A&TBCB officer or employee other than the person signing the determination letter, that other person's identity and position must be stated in the determination letter.

(d) Each initial determination which denies, in whole or in part, a request for one or more existing, located A&TBCB records must state that the requestor may appeal the initial denial by sending a written appeal to the address shown in § 1120.23 within 30 days of receipt of the determination. (See § 1120.36.)

(e) A determination is deemed issued on the date the determination letter is placed in A&TBCB mailing channels for first class mailing to the requestor, delivered to the U.S. Postal Service for mailing, or personally delivered to the requestor, whichever date first occurs.

(f) When a request must be denied because the record has not yet been located (although it is believed to be in the A&TBCB's possession), the A&TBCB office responsible for maintaining the record must continue to search diligently until it is located or it appears that the record does not exist or is not in the A&TBCB's possession, and must periodically inform the requestor of the office's progress.

§ 1120.36 Appeals from initial denials.

(a) Any person whose request has been denied in whole or in part by an initial determination may appeal that denial by addressing a written appeal to the address shown in § 1120.23.

(b) Any appeal must be mailed or filed in person at the address shown in § 1120.23—

(1) In the case of a denial of an entire request, generally not later than 30 calendar days after the date the requestor received the initial determination on the request; or

(2) In the case of a partial denial, generally not later than 30 calendar days after the requestor receives all records being made available pursuant to the initial determination.

An appeal which does not meet the requirements of this paragraph may be treated either as a timely appeal or as a new request, at the option of the Freedom of Information Officer.

(c) The appeal letter must contain—

(1) A reference to the Request Identification Number (RIN);

(2) The date of the initial determination;

(3) The name and address of the person who issued the initial denial;

(4) A statement of which of the records to which access was denied are the subjects of the appeal; and

(5) If the applicant wishes, such facts and legal or other authorities as he or she considers appropriate.

§ 1120.37 A&TBCB action on appeals.

(a) The General Counsel must make one of the following legal determinations in connection with every appeal from the initial denial of a request for an existing, located record:

(1) The record must be disclosed;

(2) The record must not be disclosed because a statute or a provision of this part so requires; or

(3) The record is exempt from mandatory disclosure but legally may be disclosed as a matter of agency discretion.

(b) Whenever the General Counsel has determined under paragraph (a)(3) of this section that a record is exempt from mandatory disclosure but legally may be disclosed, the matter must be referred to the Executive Director. If the Executive Director determines that an important purpose would be served by withholding the record, the General Counsel shall issue a determination denying the appeal. If the Executive Director determines that no important purpose would be served by withholding the record, the General Counsel must disclose the record.

(c) The General Counsel may delegate his or her authority under this section to any other attorney employed by the A&TBCB in connection with any cateogory of appeals or any individual appeals.

(d) A determination denying an appeal from an initial denial must—

(1) Be in writing;

(2) State which of the exemptions in 5 U.S.C. 552(b) apply to each requested existing record;

(3) State the reason(s) for denial of the appeal;

(4) State the name and position of each A&TBCB officer or employee who directed that the appeal be denied; and

(5) State that the person whose request was denied may obtain de novo judicial review of the denial by complaint filed with the district court of the United States in the district in which the complainant resides, or in which the agency records are situated, or in the District of Columbia, pursuant to 5 U.S.C. 552(a)(4).

§ 1120.38 Time allowed for action on appeals.

(a) Except as otherwise provided in this section, as soon as possible and not later than the twentieth working day after the day on which the Freedom of Information Officer receives an appeal from an initial denial of a request for records, the General Counsel shall issue a written determination stating which of the requested records (as to which appeal was made) will and which will not be disclosed.

(b) The period of 20 working days shall be measured from the date an appeal is first received by the Freedom of Information Officer.

(c) The General Counsel may extend the basic 20-day period established under paragraph (a) of this section by a period not to exceed 10 additional working days if—

(1) He or she notifies the Freedom of Information Officer;

(2) He or she notifies the requestor in writing within the basic 20-day period stating the reasons for the extension and the date by which he or she expects to be able to issue a determination;

(3) The extension is reasonably necessary to properly process the particular request; and

(4) One or more of the following unusual circumstances require the extension:

(i) There is a need to search for and collect the records from field facilities or other establishments that are separated from the office processing the appeal;

(ii) There is a need to search for, collect, and/or appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) There is a need for consultation with another agency or among two or more components of the A&TBCB. The General Counsel must conduct the consultation with all practicable speed.

(d) No extension of the 20-day period may be issued under paragraph (c) of this section which would cause the total of all such extensions and of any extensions issued under § 1120.33(c) to exceed 10 working days.

§ 1120.41 Exempt documents.

(a) Generally, 5 U.S.C. 552(b) establishes nine exclusive categories of matters which are exempt from the mandatory disclosure requirements of 5 U.S.C. 552(a). No request under 5 U.S.C. 552 for an existing, located, unpublished record in the A&TBCB's control may be denied by any A&TBCB office or employee unless the record contains (or its disclosure would reveal) matters that are—

(1) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and which are in fact properly classified pursuant to the Executive order;

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by statute;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Interagency or intra-agency memorandums or letters which would not be available by law to a party

other than an agency in litigation with the agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would—

(i) Interfere with enforcement proceedings;

(ii) Deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Constitute an unwarranted invasion of personal privacy;

(iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(v) Disclose investigative techniques and procedures; or

(vi) Endanger the life or physical safety of law enforcement personnel;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) The fact that the applicability of an exemption permits the withholding of a requested record (or portion of a record) does not necessarily mean that the record must or should be withheld. (See § 1120.42 *Release of exempt documents.*)

§ 1120.42 Release of exempt documents.

(a) An A&TBCB office may, in its discretion, release requested records despite the applicability of one or more of the exemptions listed in § 1120.41 (a)(2), (5), or (7). Disclosure of such records is encouraged if no important purpose would be served by withholding the records.

(b) Though the policy of the A&TBCB is to honor all requests, as indicated in § 1120.21(a), there are circumstances when the A&TBCB will not disclose a record if one or more of the FOIA exemptions applies to the record. The exemptions usually in such circumstances are exemptions (2), (3), (4), (6), (8) and (9). In these cases, where the A&TBCB has withheld a requested record, or portions thereof, the A&TBCB will disclose the exempted record when ordered to do so by a Federal court or in exceptional circumstances under appropriate restrictions with the approval of the Office of General Counsel.

Subpart E—Copies of Records and Fees for Services

§ 1120.51 Charges for services, generally.

(a) It shall be the policy of the ATBCB to comply with requests for documents made under the FOIA using the most efficient and least costly methods available. Requesters will be charged fees, in accordance with the administrative provisions and fee schedule set forth below, for searching for, reviewing (in the case of commercial use requesters only), and duplicating requested records.

(b) *Categories of requesters.* For the purpose of standard FOIA fee assessment, the four categories of requesters are: Commercial use requesters; educational and non-commercial scientific institution requesters; requesters who are representatives of the news media; and, all other requesters (see § 1120.2 (l) through (o), Definitions).

(c) *Levels of fees.* Levels of fees prescribed for each category of requester are as follows:

(1) Commercial Use Requesters—When the ATBCB receives a request for documents which appears to be a request for commercial use, the Board may assess charges in accordance with the fee schedule set forth below, which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Costs for time spent reviewing records to determine whether they are exempt from mandatory disclosure applies to the initial review only. No fees will be assessed for reviewing records, at the administrative appeal level, of the exemptions already applied.

(2) Educational and Non-Commercial Scientific Institution Requesters—The ATBCB shall provide documents to requesters in this category for the cost of reproduction alone, in accordance with the fee schedule set forth below, excluding charges for the first 100 pages of reproduced documents.

(i) To be eligible for inclusion in this category, requesters must demonstrate the request is being made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (it the request is from a non-commercial scientific institution) research.

(ii) Requesters eligible for free search must reasonably describe the records sought.

(3) Requesters Who Are Representatives of the News Media—The ATBCB shall provide documents to requesters in this category for the cost of reproduction alone, in accordance with the fee schedule set forth below, excluding charges for the first 100 pages of reproduced documents.

(4) All Other Requestors—The ATBCB shall charge requestors who do not fit into any of the categories described above, fees which recover the full direct cost of searching for and reproducing records that are responsive to the request, except that the first two hours of search time and the first 100 pages of reproduction shall be furnished without charge.

(d) Schedule of FOIA fees.

(1) Record search (ATBCB employees)—$14.00 per hour

(2) Document review (ATBCB employees)—$20.00 per hour

(3) Duplication of documents (paper copy of paper original)—$.20 per page

(e) No charge shall be made:

(1) If the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee;

(2) For any request made by an individual or group of individuals falling into the categories listed at § 1120.51(b) and described in paragraph 1120.51(c) (excepting commercial use requests) the first two hours of search time and first 100 pages of duplication;

(3) For the cost of preparing or reviewing letters of response to a request or appeal;

(4) For responding to a request for one copy of the official personnel record of the requestor;

(5) For furnishing records requested by either House of Congress, or by duly authorized committee or subcommittee or Congress, unless the records are requested for the benefit of an individual Member of Congress or for a constituent;

(6) For furnishing records requested by and for the official use of other Federal agencies; or

(7) For furnishing records needed by an A&TBCB contractor or grantee to perform the work required by the A&TBCB contract or grant.

(f) Requestors may be charged for unsuccessful or unproductive searches or for searches when records located are determined to be exempt from disclosure.

(g) Where the ATBCB reasonably believes that a requestor or group of requestors is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the ATBCB shall aggregate any such requests and charge accordingly.

[55 FR 2520, Jan. 25, 1990]

§ 1120.52 Computerized records.

(a) Information available in whole or in part in computerized form which is disclosable under the Freedom of Information Act is available to the public as follows:

(1) When there is an existing printout from the computer which permits copying the printout, the material will be made available at the per page rate stated in § 1120.51(a) for each 8½ by 11 inch page.

(2) When there is not an existing printout of information disclosable under the Freedom of Information Act, a printout shall be made if the applicant pays the cost to the A&TBCB as stated in paragraph (a)(3) of this section.

(3) Obtaining information from computerized records frequently involves a minimum computer time cost of approximately $100 per request. Multiple

requests involving the same subject may cost less per request. Services of personnel in the nature of a search shall be charged for at rates prescribed in § 1120.51(a). A charge shall be made for the computer time involved based upon the prevailing level of costs to Government organizations and upon the particular types of computer and associated equipment and the amounts of time on such equipment that are utilized. A charge shall also be made for any substantial amounts of special supplies or materials used to contain, present, or make available the output of computers based upon the prevailing levels of costs to Government organizations and upon the type and amount of the supplies and materials that are used.

(b) Information in the Board's computerized records which could be produced only by additional programming of the computer, thus producing information not previously in being, is not required to be furnished under the Freedom of Information Act. In view of the usually heavy workloads of the computers used by the Board, such a service cannot ordinarily be offered to the public.

§ 1120.53 Payment of fees.

(a) *Method of payment.* All fee payments shall be in the form of a check or money order payable to the order of the "U.S. Architectural and Transportation Barriers Compliance Board" and shall be sent (accompanied by a reference to the pertinent Request Indentification Number(s)) to the address in § 1120.23.

(b) *Charging interest.* The ATBCB may charge interest to those requestors failing to pay fees assessed in accordance with the procedures described in § 1120.51. Interest charges, computed at the rate prescribed in § 3717 of title 31 U.S.C.A., will be assessed on the full amount billed starting on the 31st day following the day on which the bill was sent.

(c) Advance payment or assurance of payment.

(1) When an ATBCB office determines or estimates that the allowable charges a requestor may be required to pay are likely to exceed $250.00, the ATBCB may require the requestor to make an advance payment or arrangements to pay the entire fee before continuing to process the request. The ATBCB shall promptly inform the requestor (by telephone, if practicable) of the need to make an advance payment or arrangements to pay the fee. That office need not search for, review, duplicate, or disclose records in response to any request by that requestor until he or she pays, or makes acceptable arrangements to pay, the total amount of fees due (or estimated to become due) under this subpart.

(2) Where a requestor has previously failed to pay a fee charged in a timely fashion, the ATBCB may require the requestor to pay the full amount owed, plus any applicable interest, as provided in § 1120.53(b) of this section, and to make an advance payment of the full amount of the estimated fee before any new or pending requests will be processed from that requestor.

(3) In those instances described in paragraphs (1) and (2) above, the administrative time limits prescribed in § 1120.33(d) will begin only after the ATBCB has received all fee payments due or acceptable arrangements have been made to pay all fee payments due.

(d) Effect of the Debt Collection Act of 1982 (Pub. L. 97-365). Requestors are advised that the ATBCB shall use the authorities of the Debt Collection Act of 1982, including disclosure to consumer reporting agencies and use of collection agencies, where appropriate, to encourage repayment of debts arising from freedom of information act requests.

(e) Waiver or reduction of fees.

(1) Records responsive to a request under 5 U.S.C. 552 shall be furnished without charge or at a charge reduced below that establsihed under paragraph (d) of § 1120.51 where the Freedom of Information Officer determines, based upon information provided by a requestor in support of a fee waiver request or otherwise made known to the Freedom of Information Officer, that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the

commercial interest of the requestor. Requests for a waiver or reduction of fees shall be considered on a case-by-case basis.

(2) In order to determine whether the first fee waiver requirement is met—i.e., that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government—Freedom of Information Officer shall consider the following four factors in sequence:

(i) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government." The subject matter of the requested records, in the context of the request, must specifically concern identifiable operations or activities of the federal government—with a connection that is direct and clear, not remote or attenuated. Furthermore, the records must be sought for their informative value with respect to those government operations or activities; a request for access to records for their intrinsic informational content alone will not satisfy this threshold consideration.

(ii) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities. The disclosable portions of the requested records must be meaningfully informative on specific government operations or activities in order to hold potential for contributing to increase public understanding of those operations and activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be likely to contribute to such understanding, as nothing new would be added to the public record.

(iii) The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding." The disclosure must contribute to the understanding of the public at large, as opposed to the individual understanding of the requestor or a narrow segment of interested persons. A requestor's identity and qualifications—e.g., expertise in the subject area and ability and intention to effectively convey information to the general public—should be considered. It reasonably may be presumed that a representative of the news media (as defined in § 1120.2(o)) who has access to the means of public dissemination readily will be able to satisfy this consideration. Requests from libraries or other record repositories (or requestors who intend merely to disseminate information to such institutions) shall be analyzed, like those of other requestors to identify a particular person who represents that he actually will use the requested information in scholarly or other analytic work and then disseminate it to the general public.

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities. The public's understanding of the subject matter in question, as compared to the level of public understanding existing prior to the disclosure, must be likely to be enhanced by the disclosure to a significant extent. Freedom of Information Officer shall not make separate value judgments as to whether information, even though it in fact would contribute significantly to public understanding of the operations or activities of the government, is "important" enough to be made public.

(3) In order to determine whether the second fee waiver requirement is met—i.e., that disclosure of the requested information is not primarily in the commercial interest of the requestor—the Freedom of Information Officer shall consider the following two factors in sequence:

(i) The existence and magnitude of a commercial interest: Whether the requestor has a commercial interest that would be furthered by the requested disclosure. The Freedom of Information Officer shall consider all commercial interests of the requestor (with reference to the definition of "commercial use" in § 1120.2(1)) or any person on whose behalf the requestor may be acting, but shall consider only those interests which would be furthered by the requested disclosure. In assessing the magnitude of identified commercial interests, consideration shall be given to the role that such FOIA-disclosed information plays with respect to those commercial interests, as well as to the extent to which FOIA disclosures serve those interests overall. Requestors shall be given a reasonable opportunity in the administrative process to provide information bearing upon this consideration.

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requestor is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requestor." A fee waiver or reduction is warranted only where, once the "public interest" standard set out in paragraph (e)(2) of this section is satisfied, that public interest can fairly be regarded as greater in magnitude than that of the requestor's commercial interest in disclosure. The Freedom of Information Officer shall ordinarily presume that where a news media requestor has satisfied the "public interest" standard, that will be the interest primarily served by disclosure to that requestor. Disclosure to data brokers or others who compile and market government information for direct economic return shall not be presumed to primarily serve "public interest."

(4) Where only a portion of the requested records satisfies both of the requirements for a waiver or reduction of fees under this paragraph, a waiver or reduction shall be granted only as to that portion.

(5) Requests for the waiver or reduction of fees shall address each of the factors listed in paragraphs (e) (2) and (3) of this section, as they apply to each record request. One hundred pages of reproduction shall be furnished without charge.

(6) A request for reduction or waiver of fees shall be addressed to the Freedom of Information Officer at the address shown in § 1120.23. The ATBCB office which is responding to the request for records shall initially determine whether the fee shall be reduced or waived and shall so inform the requestor. The initial determination may be appealed by letter addressed to the address shown in § 1120.23. The General Counsel or his or her designee shall decide such appeals.

[45 FR 80976, Dec. 8, 1980, as amended at 52 FR 43196, Nov. 10, 1987; 55 FR 2521, Jan. 25, 1990]

PART 1121—PRIVACY ACT IMPLEMENTATION

Sec.

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1121.2 Definitions.
1121.3 Procedures for requests pertaining to individuals' records in a records system.
1121.4 Times, places, and requirements for the identification of the individual making a request.
1121.5 Access to requested information to the individual.
1121.6 Request for correction or amendment to the record.
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1121.9 Notification of dispute.
1121.10 Disclosure of record to a person other than the individual to whom the record pertains.
1121.11 Accounting of disclosures.
1121.12 Fees.

AUTHORITY: 5 U.S.C. 552a; Pub. L. 93-579.

SOURCE: 50 FR 3905, Jan. 29, 1985, unless otherwise noted.

§ 1121.1 Purpose and scope.

The purposes of these regulations are to:

(a) Establish a procedure by which an individual can determine if the Architectural and Transportation Barriers Compliance Board, hereafter known as the Board or ATBCB, maintains a system of records which includes a record pertaining to the individual; and

(b) Establish a procedure by which an individual can gain access to a record pertaining to him or her for the purpose of review, amendment and/or correction.

§ 1121.2 Definitions.

For the purpose of these regulations—

(a) The term *individual* means a citizen of the United States or an alien lawfully admitted for permanent residence.

(b) The term *maintain* includes maintain, collect, use or disseminate.

(c) The term *record* means any item, collection or grouping of information about an individual that is maintained by the Board, including, but not limited to, his or her employment history, payroll information, and financial transactions and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as social security number.

(d) The term *system of records* means a group of any records under control of the Board from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(e) The term *routine use* means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

(f) The term *authorized representative* means a person who acts on an *individual's* behalf for purposes of these regulations, pursuant to written, signed instructions from the individual.

§ 1121.3 Procedures for requests pertaining to individuals' records in a records system.

An individual or authorized representative shall submit a written request to the Administrative Officer to determine if a system of records named by the individual contains a record pertaining to the individual. The individual or authorized representative shall submit a written request to the Executive Director of the ATBCB which states the individual's desire to review his or her record.

§ 1121.4 Times, places, and requirements for the identification of the individual making a request.

An individual or authorized representative making a request to the Administrative Officer of the ATBCB pursuant to § 1121.3 shall present the request at the ATBCB offices, 330 C Street, SW., Room 1010, Washington, DC 20202, on any business day between the hours of 9 a.m. and 5:30 p.m. The individual or authorized representative submitting the request should present himself or herself at the ATBCB's offices with a form of identification which will permit the ATBCB to verify that the individual is the same individual as contained in the record requested. An authorized representative shall present a written document authorizing access. The document must be signed by the individual.

§ 1121.5 Access to requested information to the individual.

Upon verification of identity the Board shall disclose to the individual or authorized representative the information contained in the record which pertains to that individual. Nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

§ 1121.6 Request for correction or amendment to the record.

The individual or authorized representative should submit a request to the Administrative Officer which states the individual's desire to correct or to amend his or her record. This request is to be made in accord with provisions of § 1121.4.

§ 1121.7 Agency review of request for correction or amendment of the record.

Within ten working days of the receipt of the request to correct or to amend the record, the Administrative Officer will acknowledge in writing such receipt and promptly either—

(a) Make any correction or amendment of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

(b) Inform the individual or authorized representative of his or her refusal to correct or to amend the record in accordance with the request, the reason for the refusal and the procedures established by the Board for the individual to request a review of that refusal.

§ 1121.8 Appeal of an initial adverse agency determination on correction or amendment of the record.

An individual who disagrees with the refusal of the Administrative Officer to correct or to amend his or her record may submit a request for a review of such refusal to the Executive Director, ATBCB, 330 C Street, SW., Room 1010, Washington, DC 20202. The Executive Director will, not later than thirty (30) working days from the date on which the individual requests such review, complete such review and make final determination, unless, for good cause shown, the Executive Director extends such thirty-day period. If, after his or her review, the Executive Director also refuses to correct or to amend the record in accordance with the request, the Board shall permit the individual or authorized representative to file with the Executive Director a concise statement setting forth the reasons for his or her disagreement with the refusal of the Executive Director and shall notify the individual or authorized representative that he or she may seek judicial review of the Executive Director's determination under 5 U.S.C. 552a(g)(1)(A).

§ 1121.9 Notification of dispute.

In any disclosure pursuant to § 1121.10 containing information about which the individual has previously filed a statement of disagreement under § 1121.8, the Board shall clearly note any portion of the record which is disputed and provide copies of the statement and, if the Executive Director deems it appropriate, copies of a concise statement of the reasons of the Executive Director for not making the amendments requested.

§ 1121.10 Disclosure of record to a person other than the individual to whom the record pertains.

The Board will not disclose a record to any individual or agency other than the individual to whom the record pertains, except to an authorized representative, unless the disclosure has been listed as a "routine use" in the Board's notices of its systems of records, or falls within one of the special disclosure situations listed in the Privacy Act of 1974 (5 U.S.C. 552a(b)).

§ 1121.11 Accounting of disclosures.

(a) The Board shall, except for disclosure made under sections (b)(1) and (b)(2) of the Privacy Act of 1974 (5 U.S.C. 552a) keep an accurate accounting of—

(1) The date, nature and purpose of each disclosure of a record to any person or another agency made pursuant to § 1121.10; and

(2) The name and address of the person or agency to whom the disclosure is made.

(b) This accounting shall be retained for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;

(c) The Board shall make this accounting available to the individual named in the record at his or her request, except for disclosures made under section (b)(7) of the Privacy Act of 1974 (5 U.S.C. 552a).

(d) The Board shall inform any person or other agency to whom disclosure has been made pursuant to § 1121.10 about any correction or notation of dispute made by the Board.

§ 1121.12 Fees.

If an individual or authorized representative requests copies of his or her record, he or she shall be charged ten cents per page, excluding the cost of any search for review of the record, in advance of receipt of the pages.

PART 1150—PRACTICE AND PROCEDURES FOR COMPLIANCE HEARINGS

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AUTHORITY: 29 U.S.C. 792, as amended.

SOURCE: 45 FR 78474, Nov. 25, 1980, unless otherwise noted.

Subpart A—General Information

§ 1150.1 Purpose.

Purpose. The purpose of the regulations in this part is to implement section 502(b)(1) of the Rehabilitation Act of 1973, Pub. L. 93-112, 29 U.S.C. 792, *as amended by* the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, Pub. L. 95-602, section 118, 92 Stat. 2979, by establishing rules of procedure for public hearings which ensure compliance with standards issued under the Architectural Barriers Act of 1968, Pub. L. 90-480, as amended, 42 U.S.C 4151 *et seq.* (including standards of the U.S. Postal Service).

§ 1150.2 Applicability: Buildings and facilities subject to guidelines and standards.

(a) *Definitions.* As used in this section, the term:

Constructed or altered on behalf of the United States means acquired by the United States through lease-purchase arrangement, constructed or altered for purchase by the United States, or constructed or altered for the use of the United States.

Primarily for use by able-bodied military personnel means expected to be occupied, used, or visited principally by military service personnel. Examples of buildings so intended are barracks, officers' quarters, and closed messes.

Privately owned residential structure means a single or multi-family dwelling not owned by a unit or subunit of Federal, state, or local government.

(b) *Buildings and facilities covered.* Except as provided in paragraph (c) of this section, the standards issued under the Architectural Barriers Act of 1968, Pub. L. 90-480, as amended, 42 U.S.C. 4151 *et seq.* (including standards of the United States Postal Service) apply to any building or facility—

(1) The intended use for which either—

(i) Will require that such building or facility be accessible to the public, or

(ii) May result in employment or residence therein of physically handicapped persons; and

(2) Which is—

(i) To be constructed or altered by or on behalf of the United States;

(ii) To be leased in whole or in part by the United States—

(A) After August 12, 1968, and before January 1, 1977, after construction or alteration in accordance with plans and specifications of the United States; or

(B) On or after January 1, 1977, including any renewal of a lease entered into before January 1, 1977, which renewal is on or after such date;

(iii) To be financed in whole or in part by a grant or loan made by the United States after August 12, 1968, if the building or facility may be subject to standards for design, construction, or alteration issued under the law authorizing the grant or loan; or

(iv) To be constructed under the authority of the National Capital Transportation Act of 1960, the National Capital Transportation Act of 1965, or Title III of the Washington Metropolitan Area Transit Regulation Compact.

(c) *Buildings and facilities not covered.* The standards do not apply to—

(1) Any privately owned residential structure, unless it is leased by the Federal government on or after January 1, 1977, for subsidized housing programs; or

(2) Any building or facility on a military installation designed and constructed primarily for use by military personnel.

(d) Any covered building or facility, as provided in this section, which is designed, constructed, or altered after the effective date of a standard issued which is applicable to the building or facility, shall be designed, constructed, altered, or leased in accordance with the standard. For purposes of this section, any design, construction, alteration or lease for which bids or offers are received before the effective date of an applicable standard, in response to an invitation for bids or request for proposals, is not subject to that standard.

§ 1150.3 Policy of amicable resolution.

The policy of the Architectural and Transportation Barriers Compliance Board is to maximize the accessibility and usability of buildings, and facilities through amicable means. To this end, the Architectural and Transportation Barriers Compliance Board encourages voluntary and informal resolution of all complaints.

§ 1150.4 Definitions.

A&TBCB means the Architectural and Transportation Barriers Compliance Board.

Agency means Federal department, agency, or instrumentality as defined in sections 551(1) and 701(b)(1) of Title 5, United States Code, or an agency official authorized to represent the agency. It includes any executive department or independent establishment in the Executive Branch of the government, including wholly owned government corporations, and any establishment in the legislative or judicial branch of the government, except the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his direction.

Alteration means any change in a building or facility or its permanent fixtures or equipment. It includes, but is not limited to, remodeling, renovation, rehabilitation, reconstruction, changes or rearrangement in structural parts, and extraordinary repairs. It does not include normal maintenance, reroofing, interior decoration, or changes to mechanical systems.

Architectural Barriers Act means the Architectural Barriers Act of 1968, Pub. L. 90-480, as amended, 42 U.S.C. 4151 *et seq.*

Building or facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, parks, sites, or other real property or interest in such property.

Chair means the Chair of the A&TBCB.

Complaint means any written notice of an alleged violation, whether from an individual or organization, or other written information reasonably indicating to the Executive Director a violation of the standard.

Construction means any section of a new building or an addition to an existing building.

Day means calendar day.

Executive Director means the A&TBCB Executive Director.

Extraordinary repair means the replacement or renewal of any element of an existing building or facility for purposes other than normal maintenance.

Judge means an Administrative Law Judge appointed by the A&TBCB and assigned to the case in accordance with either section 3105 or 3314 of Title 5, United States Code.

PER means Provisional Expedited Relief.

Respondent means a party answering the citation, including PER Citation.

Section 502 of the Rehabilitation Act means section 502 of the Rehabilitation Act of 1973, Pub. L. 93-112, 29 U.S.C. 792, as amended.

Standard means any standard for accessibility and usability prescribed under the Architectural Barriers Act.

[53 FR 39473, Oct. 7, 1988]

§ 1150.5 Scope and interpretation of rules.

(a) These rules shall govern all compliance proceedings held before a judge and all alleged violations coming to the Executive Director as a complaint.

(b) In the absence of a specific provision in these rules, procedure shall be in accordance with the Administrative Procedure Act, Subchapter II of Chapter 5 and Chapter 7, of Title 5, United States Code, and the Federal Rules of Civil Procedure, in that order.

(c) These rules and regulations shall be liberally construed to effectuate the purposes and provisions of the Architectural Barriers Act and section 502 of the Rehabilitation Act.

(d) The rules shall be applied to secure fairness in administration and elimination of unjustifiable expense and delay and to ascertain the truth.

(e) Words importing the singular number may extend and be applied to a plural and vice versa.

§ 1150.6 Suspension of rules.

Upon notice to all parties, the judge, with respect to matters pending before him/her, may modify or waive any rule in these regulations upon determination that no party will be unduly prejudiced and that the end of justice will be served.

Subpart B—Parties, Complainants, Participants

§ 1150.11 Parties.

(a) The term parties includes (1) any agency, state or local body, or other person named as a respondent in a notice of hearing or opportunity for hearing, (2) the Executive Director and (3) any person named as a party by order of the judge.

(b) The Executive Director has the sole authority to initiate proceedings by issuing a citation under § 1150.42, on the basis of (1) a complaint from any person or (2) alleged violations coming to his/her attention through any means.

§ 1150.12 Complainants.

(a) Any person may submit a complaint to the A&TBCB alleging that a building or facility does not comply with applicable standards issued under the Architectural Barriers Act. Complaints must be in writing and should be sent to: Executive Director, Architectural and Transportation Barriers Compliance Board, 1111 18th Street, Suite 501, Washington, DC 20036-3894.

A complaint form is available at the above address. Complaints may, but need not, contain (1) the complainant's name and where he/she may be reached, (2) the facility or building and, if known, the funding agency, and (3) a brief description of the barriers. A complaint form is available at the above address.

(b) The A&TBCB shall hold in confidence the identity of all persons submitting complaints unless the person submits a written authorization otherwise.

(c) The A&TBCB shall give or mail to the complainant a copy of these regulations.

(d) A complainant is not a party to the proceedings as a matter of course, but may petition the judge to participate under § 1150.13.

(e) The A&TBCB shall send the complainant a copy of the final order issued by the judge. The complainant has standing to obtain judicial review of that order.

[53 FR 39473, Oct. 7, 1988]

§ 1150.13 Participation on petition.

(a) By petitioning the judge, any person may be permitted to participate in the proceedings when he/she claims an interest in the proceedings and may contribute materially to their proper disposition. A complainant shall be permitted to participate in the proceeding when he/she petitions the judge.

(b) The judge may, in his/her discretion, determine the extent of participation of petitioners, including as an intervening party or participant. The judge may, in his/her discretion, limit participation to submitting documents and briefs, or permit the introduction of evidence and questioning of witnesses.

§ 1150.14 Appearance.

(a) A party may appear in person or by counsel or other representative and participate fully in any proceedings. An agency, state or local body, corporation or other association, may appear by any of its officers or by any employee it authorizes to appear on its behalf.

(b) A representative of a party or participant shall be deemed to control all matters respecting the interest of such party or participant in the proceedings.

(c) This section shall not be construed to require any representative to be an attorney-at-law.

(d) Withdrawal of appearance of any representative is effective when a written notice of withdrawal is filed and served on all parties and participants.

Subpart C—Form, Execution, Service and Filing of Documents for Proceedings on Citations

§ 1150.21 Form of documents to be filed.

Documents to be filed under the rules in this part shall be dated, the original signed in ink, shall show the docket number and title of the proceeding and shall show the title, if any, and address of the signatory. Copies need not be signed; however, the name of the person signing the original, but not necessarily his/her signature, shall be reproduced. Documents shall be legible and shall not be more than 8½ inches wide.

§ 1150.22 Signature of documents.

The signature of a party, authorized officer, employee or attorney constitutes a certification that he/she has read the document, that to the best of his/her knowledge, information, and belief there is a good ground to support it, and that it is not interposed for delay. If a document is not signed or is signed with intent to defeat the purpose of this section, it may be stricken as sham and false and the proceeding may proceed as though the document had not been filed.

§ 1150.23 Filing and service.

(a) *General.* All notices, written motions, requests, petitions, memoranda, pleadings, briefs, decisions, and correspondence to the judge, from a party or a participant or vice versa, relating to a proceeding after its commencement shall be filed and served on all parties and participants.

(b) *Filing.* Parties shall submit for filing the original and two copies of documents, exhibits, and transcripts of testimony. Filings shall be made in person or by mail, with the hearing clerk at the address stated in the notice of hearing or notice of opportunity for hearing, during regular business hours. Regular business hours are every Monday through Friday (Federal legal holidays excepted) from 9 a.m. to 5:30 p.m. Standard or Daylight Savings Time, whichever is effective in the city where the office of the judge is located at the time.

(c) *Service.* Service of one copy shall be made on each party and participant by personal delivery or by certified mail, return receipt requested, properly addressed with postage prepaid. When a party or participant has appeared by attorney or other representative, service upon the attorney or representative is deemed service upon the party or participant.

§ 1150.24 [Reserved]

§ 1150.25 Date of service.

The date of service shall be the day when the matter is deposited in United States mail or is delivered in person, except that the date of service of the initial notice of hearing or opportunity for hearing shall be the date of its delivery, or the date that its attempted delivery is refused.

§ 1150.26 Certificate of service.

The original of every document filed and required to be served upon parties to a proceeding shall be endorsed with a certificate of service signed by the party making service or by his/her attorney or representative, stating that such service has been made, the date of service, and the manner of service, whether by mail or personal delivery.

Subpart D—Time

§ 1150.31 Computation.

In computing any period of time under these rules or in any order issued under them, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or Federal legal holiday, in which event it includes the next following business day. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and Federal legal holidays shall be excluded from the computation.

§ 1150.32 Extension of time or postponement.

(a) Requests for extension of time shall be addressed to the judge and served on all parties and participants. Requests should set forth the reasons for the application.

(b) If made promptly, answers to requests for extension of time are permitted.

(c) The judge may grant the extension upon a showing of good cause by the applicant.

Subpart E—Proceedings Prior to Hearings; Pleadings and Motions

§ 1150.41 Informal resolution.

(a) The A&TBCB immediately shall send copies of complaints to all interested agencies and persons. In addition, the A&TBCB shall apprise any person who might become a party to compliance proceedings of the alleged instances of noncompliance and afford him/her a reasonable opportunity to respond or submit pertinent documents.

(b) The Executive Director or his/her designee shall seek the cooperation of persons and agencies in obtaining compliance and shall provide assistance and guidance to help them comply voluntarily.

(c) Upon request of the Executive Director, interested agencies or persons, including, but not limited to, occupant agencies, recipients of assistance, and lessors, shall submit to the Executive Director or his/her designee timely, complete, and accurate reports concerning the particular complaint. Reports shall be completed at such times, and in such form containing all information as the Executive Director or his/her designee may prescribe.

(d) The Executive Director, or his/her designee, shall have access during normal business hours to books, records, accounts and other sources of information and facilities as may be pertinent to ascertain compliance. Considerations of privacy or confidentiality asserted by an agency or person may not bar the Executive Director from evaluating such materials or seeking to enforce compliance. The Executive Director may seek a protective order authorizing the use of allegedly confidential materials on terms and conditions specified by the judge.

(e) Complaints should be resolved informally and expeditiously, by the interested persons or agencies. If compliance with the applicable standards is not achieved informally or an impasse concerning the allegations of compliance or noncompliance is reached, the Executive Director will review the matter, including previous attempts by agencies to resolve the complaint, and take actions including, but not limited to, surveying and investigating buildings, monitoring compliance programs of agencies, furnishing technical assistance, such as standard interpretation, to agencies, and obtaining assurances, certifications, and plans of action as may be necessary to ensure compliance.

(f) All actions to informally resolve complaints under paragraphs (a) through (e) of this section shall be completed within one hundred eighty (180) days after receipt of the complaint by all affected agencies and persons. A complaint shall be deemed informally resolved if the person or agencies responsible for the alleged violation either:

(1) Demonstrates to the Executive Director that no violation has occurred, or

(2) Corrects the violation, or

(3) Agrees in writing to implement specific compliance action within a definite time agreed to by the Executive Director, or

(4) Are timely implementing a plan for compliance agreed to by the Executive Director.

No later than ten (10) days after the determination of the one hundred eighty (180) day period, the Executive Director shall either issue a citation under § 1150.42, or determine in writing that a citation will not be issued at that time and the reasons that it is considered unnecessary.

(g) A determination not to issue a citation shall be served in accordance with § 1150.23 on all interested agencies and persons upon whom a citation would have been served if it had been issued. Except as otherwise provided in paragraph (i) of this section, the failure of the Executive Director to take action within the ten (10) day period after termination of the one hundred eighty (180) day informal resolution period shall not preclude the Executive Director from taking action thereafter.

(h) Nothing in paragraphs (a) through (g) of this section shall be construed as precluding the Executive Director before the termination of the one hundred eighty (180) day informal resolution period from:

(1) Issuing a citation if it is reasonably clear that informal resolution cannot be achieved within that time, or

(2) Determining not to issue a citation if it is reasonably clear that compliance can be achieved or that issuance of a citation is not otherwise warranted.

(i) At any time after the expiration of one hundred ninety (190) days after receipt of the complaint by all affected agencies and persons, any person or agency receiving a copy of the complaint, or the complainant, may serve a written request on the Executive Director to issue a citation or determination not to proceed within thirty (30) days. If the Executive Director fails to serve a written response within thirty (30) days of receipt of such a request, the complaint shall be deemed closed.

[53 FR 39474, Oct. 7, 1988]

§ 1150.42 Citations.

(a) If there appears to be a failure or threatened failure to comply with a relevant standard, and the noncompliance or threatened noncompliance cannot be corrected or resolved by informal means under § 1150.41, the Executive Director on behalf of the A&TBCB may issue a written citation, requesting the ordering of relief necessary to ensure compliance with the standards or guidelines and requirements. The relief may include the suspension or withholding of funds and/or specific corrective action.

(b) The citation shall be served upon all interested parties, as appropriate, including but not limited to the complainant, the agency having custody, control, or use of the building or facility, and the agency funding by contract, grant, or loan, the allegedly noncomplying building or facility.

(c) The citation shall contain:

(1) A concise jurisdictional statement reciting the provisions of section 502 of the Rehabilitation Act and Architectural Barriers Act under which the requested action may be taken, (2) a short and plain basis for requesting the imposition of the sanctions, (3) a statement either that within fifteen (15) days a hearing date will be set or that the agency or affected parties may request a hearing within fifteen (15) days from service of the citation, and (4) a list of all pertinent documents necessary for the judge to make a decision on the alleged noncompliance, including but not limited to, contracts, invitations for bids, specifications, contract or grant drawings, and correspondence.

(d) The Executive Director shall file copies of all pertinent documents listed in the citation simultaneously with filing the citation.

§ 1150.43 Answers.

(a) Answers shall be filed by respondents within fifteen (15) days after receipt of a citation.

(b) The answer shall admit or deny specifically and in detail, matters set forth in each allegation of the citation. If the respondent is without knowledge, the answer shall so state and such statement shall be deemed a denial. Matters not specifically denied shall be deemed admitted. Failure to file a timely answer shall constitute an admission of all facts recited in the citation.

(c) Answers shall contain a list of additional pertinent documents not listed in the citation when respondent reasonably believes these documents are necessary for the judge to make a decision. Copies of the listed documents shall be filed with the answer.

(d) Answers may also contain a request for a hearing under § 1150.45.

§ 1150.44 Amendments.

(a) The Executive Director may amend the citation as a matter of course before an answer is filed. A respondent may amend its answer once as a matter of course, but not later than five (5) days after the filing of the original answer. Other amendments of the citation or the answer shall be made only by leave of judge.

(b) An amended citation shall be answered within five (5) days of its service, or within the time for filing an answer to the original citation, whichever is longer.

§ 1150.45 Request for hearing.

When a citation does not state that a hearing will be scheduled, the respondent, either in a separate paragraph of the answer, or in a separate document, may request a hearing. Failure of a respondent to request a hearing within fifteen (15) days from service of the citation shall be deemed a waiver of the right to a hearing and shall constitute consent to the making of a decision on the basis of available information.

§ 1150.46 Motions.

(a) Motions and petitions shall state the relief sought, the authority relied upon, and the facts alleged.

(b) If made before or after the hearing, these matters shall be in writing. If made at the hearing, they may be stated orally or the judge may require that they be reduced to writing and filed and served on all parties.

(c) Except as otherwise ordered by judge, responses to a written motion or petition shall be filed within ten (10) days after the motion or petition is served. An immediate oral response may be made to an oral motion. All oral arguments on motions will be at the discretion of the judge.

(d) A reply to a response may be filed within within five (5) days after the response is served. The reply shall address only the contents of the response.

§ 1150.47 Disposition of motions and petitions.

The judge may not sustain or grant a written motion or petition prior to expiration of the time for filing responses, but may overrule or deny such motion or petition without awaiting response, *Providing however*, That prehearing conferences, hearings, and decisions need not be delayed pending disposition of motions or petitions. All motions and petitions may be ruled upon immediately after reply. Motions and petitions not disposed of in separate rulings or in decisions will be deemed denied.

§ 1150.48 PER: Citation, answer, amendment.

(a) Unless otherwise specified, other relevant sections shall apply to PER proceedings.

(b) In addition to all other forms of relief requested, the citation shall request PER when it appears to the Executive Director that immediate and irreparable harm from noncompliance with the standard is occurring or is about to occur. Citations requesting PER shall recite specific facts and include the affidavit or the notarized complaint upon which the PER request is based. Citations requesting PER shall recite that a hearing regarding PER has been scheduled to take place eight (8) days after receipt of the citation. Citations requesting PER may be filed without prejudice to proceedings in which PER is not requested and without prejudice to further proceedings if PER is denied. The time and place of hearing fixed in the citation shall be reasonable and shall be subject to change for cause.

(c) Answers to citations requesting PER shall be in the form of all answers, as set forth in § 1150.43, and must be filed within four (4) days after receipt of the citation. Answers shall recite in detail, by affidavit or by notarized answer, why the PER requested should not be granted.

(d) When a citation contains both a request for relief to ensure compliance with a standard and a request for PER, an answer to the PER request shall be filed in accordance with paragraph (c) of this section and an answer to a request for other relief shall be filed in accordance with § 1150.43.

(e) Citations and answers in PER proceedings may not be amended prior to hearing. Citations and answers in PER proceedings may be amended at the hearing with the permission of the judge.

Subpart F—Responsibilities and Duties of Judge

§ 1150.51 Who presides.

(a) A judge assigned to the case under section 3105 or 3344 of Title 5, United States Code (formerly section 11 of the Administrative Procedure Act), shall preside over the taking of evidence in any hearing to which these rules of procedure apply.

(b) The A&TBCB shall, in writing, promptly notify all parties and participants of the assignment of the judge. This notice may fix the time and place of hearing.

(c) Pending his/her assignment, the responsibilities, duties, and authorities of the judge under these regulations shall be executed by the A&TBCB, through the Chair or another member of the A&TBCB designated by the Chair. A Board member shall not serve in this capacity in any proceeding relating to the member, his/her Federal agency, or organization of which he/she is otherwise interested.

[53 FR 39474, Oct. 7, 1988]

§ 1150.52 Authority of judge.

The judge shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, and maintain order. He/she shall have all powers necessary to effect these ends, including (but not limited to) the power to:

(a) Arrange and issue notice of the date, time, and place of hearings previously set.

(b) Hold conferences to settle, simplify, or fix the issues in proceedings, or to consider other matters that may aid in the expeditious disposition of the proceedings.

(c) Require parties and participants to state their position with respect to the various issues in the proceedings.

(d) Administer oaths and affirmations.

(e) Rule on motions, and other procedural items on matters pending before him/her.

(f) Regulate the course of the hearing and conduct of counsel.

(g) Examine witnesses and direct witnesses to testify.

(h) Receive, rule on, exclude or limit evidence.

(i) Fix time for filing motions, petitions, briefs, or other items in matters pending before him/her.

(j) Issue decisions.

(k) Take any action authorized by the rules in this part or the provisions of sections 551 through 559 of Title 5, United States Code (the Administrative Procedure Act).

[45 FR 78474, Nov. 25, 1980. Redesignated at 53 FR 39474, Oct. 7, 1988]

§ 1150.53 Disqualification of judge.

(a) A judge shall disqualify himself/herself whenever in his/her opinion it is improper for him/her to preside at the proceedings.

(b) At any time following appointment of the judge and before the filing of the decision, any party may request the judge to withdraw on grounds of personal bias or prejudice either against it or in favor of any adverse party, by promptly filing with him/her an affidavit setting forth in detail the alleged grounds for disqualification.

(c) If, in the opinion of the judge, the affidavit referred to in paragraph (b) of this section is filed with due diligence and is sufficient on its face, the judge shall promptly disqualify himself/herself.

(d) If the judge does not disqualify himself/herself, he/she shall so rule upon the record, stating the grounds for his/her ruling. Then, he/she shall proceed with the hearing, or, if the hearing has closed, he/she shall proceed with the issuance of the decision.

[45 FR 78474, Nov. 25, 1980. Redesignated at 53 FR 39474, Oct. 7, 1988]

Subpart G—Prehearing Conferences and Discovery

§ 1150.61 Prehearing conference.

(a) At any time before a hearing, the judge on his/her own motion or on motion of a party, may direct the parties or their representative to exchange information or to participate in a prehearing conference for the purpose of considering matters which tend to simplify the issues or expedite the proceedings.

(b) The judge may issue a prehearing order which includes the agreements reached by the parties. Such order shall be served upon all parties and participants and shall be a part of the record.

§ 1150.62 Exhibits.

(a) Proposed exhibits shall be exhanged at the prehearing conference, or otherwise prior to the hearing if the judge so requires. Proposed exhibits not so exchanged may be denied admission as evidence.

(b) The authenticity of all proposed exhibits will be deemed admitted unless written objection to them is filed prior to the hearing or unless good cause is shown at the hearing for failure to file such written objection.

§ 1150.63 Discovery.

(a) Parties are encouraged to engage in voluntary discovery procedures. For good cause shown under appropriate circumstances, but not as a matter of course, the judge may entertain motions for permission for discovery and issue orders including orders—(1) to submit testimony upon oral examination or written interrogatories before an officer authorized to administer oaths, (2) to permit service of written interrogatories upon the opposing party, (3) to produce and permit inspection of designated documents, and (4) to permit service upon the opposing parties of a request for the admission of specified facts.

(b) Motions for discovery shall be granted only to the extent and upon such terms as the judge in his/her discretion considers to be consistent with and essential to the objective of securing a just and inexpensive determination of the merits of the citation without unnecessary delay.

(c) In connection with any discovery procedure, the judge may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense, including limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents. If any party fails to comply with a discovery order of the judge, without an excuse or explanation satisfactory to the judge, the judge may decide the fact or issue relating to the material requested to be produced, or the subject matter of the probable testimony, in accordance with claims of the other party in interest or in accordance with the other evidence available to the judge, or make such other ruling as he/she determines just and proper.

Subpart H—Hearing Procedures

§ 1150.71 Briefs.

The judge may require parties and participants to file written statements of position before the hearing begins. The judge may also require the parties to submit trial briefs.

§ 1150.72 Purpose of hearing.

Hearings for the receipt of evidence will be held only in cases where issues of fact must be resolved. Where it appears from the citation, the answer, stipulations, or other documents in the record, that there are no matters of material fact in dispute, the judge may enter an order so finding, vacating the hearing date, if one has been set, and fixing the time for filing briefs.

§ 1150.73 Testimony.

(a) Formal rules of evidence shall not apply, but rules or principles designed to assure production of the most probative evidence available do apply. Testimony shall be given orally under oath or affirmation; but the judge, in his/her discretion, may require or permit the direct testimony of any witness to be prepared in writing and served on all parties in advance of the hearing. Such testimony may be adopted by the witness at the hearing and filed as part of the record.

(b) All witnesses shall be available for cross-examination and, at the discretion of the judge, may be cross-examined without regard to the scope of direct examination as to any matter which is relevant and material to the proceeding.

(c) When testimony is taken by deposition, an opportunity shall be given, with appropriate notice, for all parties to cross-examine the witness. Objections to any testimony or evidence presented shall be deemed waived unless raised at the time of the deposition.

(d) Witnesses appearing before the judge shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Witnesses whose depositions are taken and the persons taking the same shall be entitled to the same fees as are paid for like services in the courts of the United States. Witness fees and mileage shall be paid by the party requesting the witness to appear, and the person taking a deposition shall be paid by the party requesting the taking of the deposition.

§ 1150.74 Exclusion of evidence.

The judge may exclude evidence which is immaterial, irrelevant, unreliable, or unduly repetitious.

§ 1150.75 Objections.

Objections to evidence or testimony shall be timely and may briefly state the grounds.

§ 1150.76 Exceptions.

Exceptions to rulings of the judge are unnecessary. It is sufficient that a party at the time the ruling of the judge is sought, makes known the action which he/she desires the judge to take, or his/her objection to an action taken, and his/her grounds for it.

§ 1150.77 Official notice.

Where official notice is taken or is to be taken of a material fact not appearing in the evidence of record, any party on timely request, shall be afforded an opportunity to question the propriety of taking notice or to rebut the fact noticed.

§ 1150.78 Public documents.

When a party or paticipant offers, in whole or in part, a public document, such as an official report, decision, opinion, or published scientific or economic statistical data issued by any of the executive departments, or their subdivisions, legislative agencies or committees or administrative agencies of the Federal government (including government-owned corporations), or a similar document issued by a State or local government or their agencies, and such document (or part thereof) has been shown by the offeror to be reasonably available to the public, such document need not be produced or marked for identification, but may be offered for official notice, as a public document by specifying the document or its relevant part.

§ 1150.79 Offer of proof.

An offer of proof made in connection with an objection taken to a ruling of the judge rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony. If the excluded evidence consists of evidence in documentary or written form or refers to documents or records, a copy of the evidence shall be marked for identification and shall accompany the record as the offer of proof.

§ 1150.80 Affidavits.

An affidavit is not inadmissible as such. Unless the judge fixes other time periods, affidavits shall be filed and served on the parties not later than fifteen (15) days prior to the hearing. Not less than seven (7) days prior to hearing, a party may file and serve written objections to any affidavit on the ground that he/she believes it necessary to test the truth of its assertions at hearing. In such event the assertions objected to will not be received in evidence unless the affiant is made available for cross-examination, or the judge determines that cross-examination is not necessary for the full and true disclosure of facts referred to in such assertions. Not withstanding any objection, however, affidavits may be considered in the case of any respondent who waives a hearing.

§ 1150.81 Consolidated or joint hearing.

In cases in which the same or related facts are asserted to constitute noncompliance with standards or guidelines and requirements, the judge may order all related cases consolidated and may make other orders concerning the proceedings as will be consistent with the objective of securing a just and inexpensive determination of the case without unnecessary delay.

§ 1150.82 PER proceedings.

(a) In proceedings in which a citation, or part of one, seeking PER has been filed, the judge shall make necessary rulings with respect to time for filing of pleadings, the conduct of the hearing, and to all other matters. He/she shall do all other things necessary to complete the proceeding in the minimum time consistent with the objective of securing an expeditious, just and inexpensive determination of the case. The times for actions set forth in these rules shall be followed unless otherwise ordered by the judge.

(b) The judge shall determine the terms and conditions for orders of PER. These orders must be consistent with preserving the rights of all parties so as to permit the timely processing of the citation, or part of it, not requesting PER, as well as consistent with the provisions and objectives of the Architectural Barriers Act and Section 502 of the Rehabilitation Act. In issuing an order for PER, the judge shall make the following specific findings of fact and conclusions of law (1) the Executive Director is likely to succeed on the merits of the proceedings; (2) the threatened injury or violation outweighs the threatened harm to the respondent if PER is granted; and (3) granting PER is in the public interest.

(c) The judge may dismiss any citation or part of a citation seeking PER when the judge finds that the timely processing of a citation not requesting PER will adequately ensure the objectives of section 502 of the Rehabilitation Act and that immediate and irreparable harm caused by noncompliance with the standards or guidelines and requirements is not occurring or about to occur.

Subpart I—The Record

§ 1150.91 Record for decision.

The transcript of testimony, exhibits and all papers, documents and requests filed in the proceeding, including briefs and proposed findings and conclusions, shall constitute the record for decision.

§ 1150.92 Official transcript.

The official transcripts of testimony, and any exhibits, briefs, or memoranda of law filed with them, shall be filed with the judge. Transcripts of testimony in hearings may be obtained from the official reporter by the parties and the public at rates not to exceed the maximum rates fixed by the contract between the A&TBCB and the reporter. Upon notice to all parties, the judge may authorize corrections to the transcript as are necessary to reflect accurately the testimony.

Subpart J—Posthearing Procedures; Decisions

§ 1150.101 Posthearing briefs; proposed findings.

The judge shall fix the terms, including time, for filing post-hearing statements of position or briefs, which may contain proposed findings of fact and conclusions of law. The judge may fix a reasonable time for such filing, but this period shall not exceed thirty (30) days from the receipt by the parties of the transcript of the hearing.

§ 1150.102 Decision.

(a) The judge shall issue a decision within thirty (30) days after the hearing ends or, when the parties submit posthearing briefs, within thirty (30) days after the filing of the briefs.

(b) The decision shall contain (1) all findings of fact and conclusions of law regarding all material issues of fact and law presented in the record, (2) the reasons for each finding of fact and conclusion of law, and (3) other provisions which effectuate the purposes of the Architectural Barriers Act and section 502 of the Rehabilitation Act. The decision may direct the parties to take specific action or may order the suspension or withholding of Federal funds.

(c) The decision shall be served on all parties and participants to the proceedings.

§ 1150.103 PER: Posthearing briefs, decision.

(a) No briefs or posthearing statements of position shall be required in proceedings seeking PER unless specifically ordered by the judge.

(b) In proceedings seeking PER the decision may be given orally at the close of the hearing and shall be made in writing within three (3) days after the hearing.

§ 1150.104 Judicial review.

Any complainant or participant in a proceeding may obtain judicial review of a final order issued in a compliance proceeding.

§ 1150.105 Court enforcement.

The Executive Director, at the direction of the Board, shall bring a civil action in any appropriate United States district court to enforce, in whole or in part, any final compliance order. No member of the A&TBCB shall participate in any decision of the A&TBCB concerning a proceeding relating to the member, his/her Federal agency, or organization to which he/she is a member or in which he/she is otherwise interested.

Subpart K—Miscellaneous Provisions

§ 1150.111 Ex parte communications.

(a) No party, participant or other person having an interest in the case shall make or cause to be made an ex parte communication to the judge with respect to the case.

(b) A request for information directed to the judge which merely inquiries about the status of a proceeding without discussing issues or expressing points of view is not deemed an ex parte communication. Communications with respect to minor procedural matters or inquires or emergency requests for extensions of time are not deemed ex parte communications prohibited by paragraph (a) of this section. Where feasible, however, such communications should be by letter, with copies delivered to all parties. Ex parte communications between a party or participant and the Executive Director with respect to securing compliance are not prohibited.

(c) In the event an ex parte communication occurs, the judge shall issue orders and take action as fairness requires. A prohibited communication in writing received by the judge shall be made public by placing it in the correspondence file of the docket in the case and will not be considered as part of the record for decision. If the prohibited communication is received orally, a memorandum setting forth its substance shall be made and filed in the correspondence section of the docket in the case. A person referred to in this memorandum may file a comment for inclusion in the docket if he/she considers the memorandum to be incorrect.

§ 1150.112 Post-order proceedings.

(a) Any party adversely affected by the compliance order issued by a judge may make a motion to the judge to have such order vacated upon a showing that the building or facility complies with the order.

(b) Notice of motions and copies of all pleadings shall be served on all parties and participants to the original proceeding. Responses to the motion to vacate shall be filed within ten (10) days after receipt of the motion unless the judge for good cause shown grants additional time to respond.

(c) Oral arguments on the motion may be ordered by the judge. The judge shall fix the terms of the argument so that they are consistent with the objective of securing a prompt, just, and inexpensive determination of the motion.

(d) Within ten (10) days after receipt of all answers to the motion, the judge shall issue his/her decision in accordance with § 1150.102 (b) and (c).

§ 1150.113 Amicable resolution.

(a) Amicable resolution is encouraged at any stage of proceedings where such resolution is consistent with the provisions and objectives of the Architectural Barriers Act and section 502 of the Rehabilitation Act.

(b) Agreements to amicably resolve pending proceedings shall be submitted by the parties and shall be accompanied by an appropriate proposed order.

(c) The Executive Director is authorized to resolve any proceeding on behalf of the A&TBCB unless otherwise specifically directed by the A&TBCB and afterwards may file appropriate stipulations or notice that the proceeding is discontinued.

§ 1150.114 Effect of partial invalidity.

If any section, subsection, paragraph, sentence, clause or phrase of these regulations is declared invalid for any reason, the remaining portions of these regulations that are severable from the invalid part shall remain in full force and effect. If a part of these regulations is invalid in one or more of its applications, the part shall remain in effect in all valid applications that are severable from the invalid applications.

PART 1151—GENERAL STATEMENT OF POLICY

Sec.

1151.1 Federal parking space policies.
1151.2 Amicus curiae policies.
1151.3 Public transportation accessibility policy.
1151.4 Federal procurement policies.
1151.5 Voting accessibility policy.

AUTHORITY: Pub. L. 93-112, as amended by Pub. L. 95-602 (29 U.S.C. 792).

§ 1151.1 Federal parking space policies.

Those standards for design, construction, and alteration issued under the Architectural Barriers Act of 1968, as amended, should be revised to require in all federally owned, occupied, or leased buildings and facilities that (a) accessible parking spaces be located closest to an accessible entrance, and (b) at least 2 percent of any visitor parking (a minimum of one space in any such visitor parking lot) be provided for handicapped visitors.

[44 FR 18022, Mar. 26, 1979]

§ 1151.2 Amicus curiae policies.

(a) *Applicability.* This section sets forth policies and procedures for the A&TBCB to participate as amicus curiae in litigation.

(b) *Definition.* As used in this section, the term amicus curiae means to intervene, appear and participate, or to appear as amicus curiae, in any court of the United States or in any court of a State in civil actions.

(c) The Executive Committee of the ATBCB has the duty and responsibility to review requests to the Board to enter litigation as *amicus curiae*. In carrying out these responsibilities, the Executive Committee is delegated the authority to disapprove such requests and make recommendations to the ATBCB to approve such requests. ATBCB approval shall be required prior to any *amicus* filing. The Executive Committee may request the Chairperson of the ATBCB to call a special meeting of the ATBCB to expedite ATBCB action on the Executive Committee's recommendations.

[45 FR 44926, July 2, 1980, as amended at 48 FR 52911, Nov. 23, 1983; 48 FR 54223, Dec. 1, 1983]

§ 1151.3 Public transportation accessibility policy.

Just as disabled persons are entitled to equal access to public buildings, they are entitled to equal mobility; this means that they have the right to public transportation that is comparable to that available to the general public in terms of geographic range and hours of operation, trip decision time, fares, and the lack of restrictions on trip purpose and eligibility.

[45 FR 43718, June 30, 1980]

§ 1151.4 Federal procurement policies.

(a) Except as otherwise provided in this § 1151.4, for purposes of the Federal Property and Administrative Services Act and implementing regulations and circulars the Chairperson shall act as the "Head of the Agency" or "Agency Head" for administrative determinations.

(b) Except as otherwise provided in this § 1151.4, for purposes of the Federal Property and Administrative Services Act and implementing regulations and circulars, the Executive Director is delegated authority to act as "Head of the Procuring Activity" and to designate appropriate subordinate officials. The Executive Director may (1) enter all contracts on behalf of the ATBCB in accordance with the provisions of this § 1151.4 or may delegate that responsibility, (2) to the extent authorized by law, direct suspension or termination of contracts under his or her procuring authority, and of contracts under the delegated authority of designated subordinate officials, and (3) process unsolicited proposals.

(c) The ATBCB will approve the specific objective of each procurement (1) in excess of $10,000, or (2) which has a major policy implication before any such procurement is awarded and reserves the right, as warranted, to impose limitations applicable to particular procurements.

(d) The ATBCB will enter into a sole source procurement only after approval to do so has been given by a majority vote of the members of the Planning and Budget Committee of the ATBCB and the Chairperson.

(e) To the extent authorized by law, the ATBCB may:

(1) Ratify unauthorized procurements, and

(2) Direct suspension or termination of contracts under its procuring authority.

(f) Paragraphs (c)(1) and (d) of this section do not apply to basic Administrative procurements, regardless of amount of said procurements, except as otherwise provided in paragraph (f)(2), of this section. The term basic Administrative procurement shall mean procurements for:

(1) Purchase or rental of equipment, including data processing equipment, and related services.

(2) Printing. (However, each printing procurement in excess of $10,000 shall be approved in advance by the ATBCB.)

(3) Stenographic services.

(4) Office supplies.

(5) Furniture and furnishings.

(6) Services of administrative law judges and expert witnesses in connection with compliance proceedings.

(7) Administrative support services of another Federal agency.

(8) Consultants and related expenses to perform staff functions when appropriate staff has not been hired.

(9) Space acquisition.

(10) Accommodating the known physical handicaps of employees.

(11) Appropriate training of employees.

(12) Meeting other administrative needs of the office.

(g) The Executive Director will report semi-annually in writing to the ATBCB on each procurement, regardless of amount, entered into to date in the fiscal year, listing each procurement separately with its amount and date. In addition, the report shall list all procurements then in progress that have not been awarded and any procurements being considered for any future time.

[46 FR 37045, July 17, 1981, as amended at 48 FR 52911, Nov. 23, 1983]

§ 1151.5 Voting accessibility policy.

Disabled people are entitled to effective access to voter registration and polling places. The Board encourages States to provide registration and polling facilities that are accessible to physically handicapped persons, including, where appropriate, providing effective supplemental aids and devices for persons with sensory and mobility impairments.

[48 FR 15676, Apr. 12, 1983]

PART 1152—EMPLOYEE RESPONSIBILITIES AND CONDUCT

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APPENDIX A—LIST OF POSITIONS SUBJECT TO SUBPART D

AUTHORITY: E.O. 11222; 5 CFR 735.

SOURCE: 44 FR 52200, Sept. 7, 1979, unless otherwise noted.

Subpart A—General Provisions

§ 1152.735-101 Purpose.

The maintenance of unusually high standards of honesty, integrity, impartiality, and conduct by Government employees and special Government employees is essential to assure the proper performance of the Government business and the maintenance of confidence by citizens in their Government. The avoidance of misconduct and conflicts of interest on the part of Government employees and special Government employees through informed judgment is indispensable to the maintenance of these standards. To accord with these concepts, this part sets forth the Board's regulations prescribing standards of conduct and responsibilities, and governing statements reporting employment and financial interests for employees and special Government employees.

§ 1152.735–102 Definitions.

(a) *Board* means the Architectural and Transportation Barriers Compliance Board.

(b) *Employee* means an officer or employee of the Board but does not include a special Government employee, public member, or a member of the uniformed services.

(c) *Person* means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other organization or institution.

(d) *Special Government employee* means a *special Government employee*, as defined in section 202 of Title 18 of the United States Code, that is, one appointed to serve with or without compensation, for not more than 130 days during any period of 365 days on a full-time or intermittent basis, who is employed on the Board, including a Public Member, but does not include a member of the uniformed services.

(e) *Public member* means a member appointed by the President from among members of the general public.

(f) *Uniformed services* has the meaning given that term by section 2101 of Title 5, United States Code.

§ 1152.735–103 Interpretation and advisory service.

(a) The General Counsel is designated Counselor for the Board to provide guidance on matters relating to ethical conduct and shall serve as the Board's designee to the Office of Personnel Management on matters covered by this part. He/she shall be responsible for coordination of the Board's counseling services provided under paragraph (b) of this section.

(b) The counseling services provided by the Office of the General Counsel include the giving of advice and guidance to each employee and special Government employee who seeks advice and guidance on questions of conflicts of interest and other matters covered by this part.

(c) If an employee is in doubt about any matter covered by this part, or has a question as to the propriety of a past or contemplated line of conduct, he/she should discuss the problem with his/her immediate supervisor, or the Office of General Counsel.

(d) Requests for interpretative rulings concerning the applicability of the new order and regulations in this part in implementation thereof may be submitted to the Office of the General Counsel.

§ 1152.735–104 Reviewing statements and reporting conflicts of interest.

(a) Statements of employment and financial interests submitted under subpart D of this part shall be reviewed by the Executive Director. Financial statements of all employees shall be filed in the Office of the Executive Director.

(b) When a statement submitted under subpart D of this part or information from other sources indicates a conflict between the interests of an employee or special Government employee and the performance of his service for the Government, the employee, or special Government employee concerned shall be provided an opportunity to explain the conflict or appearance of conflict.

(c) When after explanation by the employee or special Government employee involved, the conflict or appearance of conflict is not resolved by the General Counsel, the information concerning the conflict or appearance of conflict shall be reported to the Chairperson for appropriate administrative action.

§ 1152.735–105 Disciplinary and other remedial action.

(a) Violations of the regulations in this part by an employee may be cause for appropriate disciplinary action which may be in addition to any penalty prescribed by law.

(b) When after consideration of the explanation of the employee or special Government employee provided by § 1152.735-104(b), the Chairperson decides that remedial action is required, he/she shall take immediate action to end the conflicts or appearance of conflicts of interest. Remedial action may include, but is not limited to:

(1) Changes in assigned duties;

(2) Divestment by the employee or special Government employee of his/her conflicting interest;

(3) Disciplinary action; or

(4) Disqualification for a particular assignment.

Remedial action, whether disciplinary or otherwise, shall be effected in accordance with any applicable laws, Executive orders and regulations.

Subpart B—Ethical and Other Conduct and Responsibilities of Employees

§ 1152.735-201 Proscribed actions.

An employee shall avoid any action, whether or not specifically prohibited by this subpart, which might result in, or create the appearance of:

(a) Using public office for private gain;

(b) Giving preferential treatment to any person;

(c) Impeding Government efficiency or economy;

(d) Losing complete independence or impartiality;

(e) Making a Government decision outside official channels; or

(f) Affecting adversely the confidence of the public in the integrity of the Government.

§ 1152.735-202 Gifts, entertainment, and favors.

(a) Except as provided in paragraphs (b) and (f) of this section, an employee shall not solicit or accept, directly or indirectly any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with his/her agency;

(2) Conducts operations or activities that are regulated by his/her agency; or

(3) Has interests that may be substantially affected by the performance or nonperformance of his/her official duty.

(b) The prohibitions of paragraph (a) of this section do not apply in the following cases:

(1) Obvious family or personal relationships, such as those between the parents, children, or spouse of the employee and the employee, when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors;

(2) Acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour where an employee may properly be in attendance;

(3) The acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans; and

(4) The acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal intrinsic value.

(c) [Reserved]

(d) An employee shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself/herself (5 U.S.C. 7351). However, this paragraph does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness, or retirement.

(e) An employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution and in section 7342 of Title 5, United States Code.

(f) Neither this section nor § 1152.735-203 precludes an employee from receipt of bona fide reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this part for which no Government payment or reimbursement is made. However, this paragraph does not allow an employee to be reimbursed, or payment to be made on his/her behalf, for excessive personal living expenses, gifts, entertainment, or other personal benefits, nor does it allow an employee to be reimbursed by a person for travel on official business under agency orders when reimbursement is proscribed by Decision B-128527 of the Comptroller General dated March 7, 1967 (46 Comp. Gen. 689).

§ 1152.735-203 Outside employment and other activity.

(a) An employee shall not engage in outside employment or other outside activity not compatible with the full and proper discharge of the duties and responsibilities of his/her Government employment. Incompatible activities include but are not limited to:

(1) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of, conflicts of interest; or

(2) Outside employment which tends to impair his/her mental or physical capacity to perform his/her Government duties and responsibilities in an acceptable manner.

(b) An employee shall not receive any salary or anything of monetary value from a private source as compensation for his/her services to the Government (18 U.S.C. 209).

(c) Employees are encouraged to engage in teaching, lecturing, and writing that is not prohibited by law, the Executive order, Office of Personnel Management regulations, or this part. However, an employee shall not, either for or without compensation, engage in teaching, lecturing, or writing, including teaching, lecturing or writing for the purpose of the special preparation of a person or class of persons for an examination of the Office of Personnel Management or Board of Examiners for the Foreign Service, that depends on information obtained as a result of his/her Government employment, except when that information has been made available to the general public or will be made available on request, or when the Chairperson or his/her designee gives written authorization for use of nonpublic information on the basis that the use is in the public interest. In addition, an employee who is a Presidential appointee covered by section 401(a) of the order shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to the responsibilities, programs, or operations of his/her agency, or which draws substantially on official data or ideas which have not become part of the body of public information.

(d) [Reserved]

(e) This section does not preclude an employee from:

(1) [Reserved]

(2) Participation in the activities of national or State political parties not proscribed by law.

(3) Participation in the affairs of or acceptance of an award for a meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service, or civic organization.

§ 1152.735-204 Financial interests.

(a) An employee shall not:

(1) Have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with his/her Government duties and responsibilities; or

(2) Engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through his/her Government employment.

(b) This section does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Government so long as it is not prohibited by law, the Executive order, Office of Personnel Management regulations, or this part.

§ 1152.735-205 Use of Government property.

An employee shall not directly or indirectly use, or allow the use of Government property of any kind, including property leased to the Government, for other than officially approved activities. An employee has a positive duty to protect and conserve Government property, including equipment, supplies, and other property entrusted or issued to him/her.

§ 1152.735-206 Misuse of information.

For the purpose of furthering a private interest, an employee shall not, except as provided in § 1152.735-203(c), directly or indirectly use, or allow the use of, official information obtained through or in connection with his/her Government employment which has not been made available to the general public.

§ 1152.735-207 Indebtedness.

An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law such as Federal, State or local taxes. For the purpose of this section, a *just financial obligation* means one acknowledged by the employee or reduced to judgment by a court or one imposed by law such as Federal, State or local taxes, and *in a proper and timely manner* means in a manner which the agency determines does not, under the circumstances, reflect adversely on the Government as his/her employer. In the event of dispute between an employee and an alleged creditor, this section does not require an agency to determine the validity or amount of the disputed debt.

§ 1152.735-208 Gambling, betting, and lotteries.

An employee shall not participate while on Government-owned or leased property or while on duty for the Government, in any gambling activity including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket. However, this section does not preclude activities:

(a) Necessitated by an employee's law enforcement duties; or

(b) Under section 3 of Executive Order 10927, namely solicitations conducted by organizations composed of employees among their own members for organizational support or for benefit or welfare funds for their members, or similar Board-approved activities.

§ 1152.735-210 Miscellaneous statutory provisions.

Each employee shall acquaint himself/herself with each statute that relates to his/her ethical and other conduct as an employee of the Board and of the Government. The attention of each employee is directed to the following statutory provisions:

(a) House Concurrent Resolution 175, 85th Congress, 2d session, 72 Stat. B12, the "Code of Ethics for Government Service".

(b) Chapter II of Title 18, United States Code, relating to bribery, graft, and conflicts of interest, as appropriate to the employees concerned.

(c) The prohibition against lobbying with appropriate funds (18 U.S.C. 1913).

(d) The prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(e) The provision relating to honoraria for speeches (2 U.S.C. 441 (i)).

(f) The prohibitions against (1) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and (2) the disclosure of confidential information (18 U.S.C. 1905).

(g) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(h) The prohibition against the misuse of Government vehicle (31 U.S.C. 638a(c)).

(i) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(j) The prohibition against the use of deceit in an examination of personnel action in connection with Government employment (18 U.S.C. 1917).

(k) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(l) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(m) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(n) The prohibitions against (1) embezzlement of government, money or property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643); and (3) embezzlement of the money or property of another person in the possession of an employee by reason of his/her employment (18 U.S.C. 654).

(o) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(p) The prohibitions against political activities in subchapter III of chapter 73 of Title 5, United States Code and 18 U.S.C. 602, 603, 607, and 608.

(q) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

Subpart C—Ethical and Other Conduct and Responsibilities of Special Government Employees

§ 1152.735-301 Use of Government employment.

A special Government employee shall not use his/her Government employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself/herself or another person, particularly one with whom he/she has family business, or financial ties.

§ 1152.735-302 Use of inside information.

(a) A special Government employee shall not use inside information obtained as a result of his/her Government employment for private gain for himself or another person either by direct action on his/her part or by counsel, recommendation, or suggestion to another person, particularly one with whom he/she has family, business, or financial ties. For the purpose of this section, *inside information* means information obtained under Government authority which has not become part of the body of public information.

(b) Special Government employees may teach, lecture, or write in a manner consistent with the provisions of § 1152.735-203(c).

§ 1152.735-303 Coercion

A special Government employee shall not use his/her Government employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself/herself or another person, particularly one with whom he/she has family, business, or financial ties.

§ 1152.735-304 Gifts, entertainment, and favors.

(a) Except as provided in paragraph (b) of this section, a special Government employee, while so employed or in connection with such employment, shall not receive or solicit from a person having business with the agency anything of value as a gift, gratuity, loan, entertainment, or favor for himself/herself or another person, particularly one with whom he/she has family, business, or financial ties.

(b) The exceptions of § 1152.735-202(b) which are applicable to employees, are also applicable to special Government employees.

§ 1152.735-305 Miscellaneous statutory provisions.

Each special Government employee shall acquaint himself/herself with each statute that relates to his/her ethical and other conduct as a special Government employee of his/her agency and of the Government. The attention of each special Government employee is directed to those statutory provisions listed in § 1152.735-210 that are applicable to special Government employees.

Subpart D—Statements of Employment and Financial Interests

§ 1152.735-401 Employees required to submit statements.

Except as provided in § 1152.735-403, the following categories of employees shall submit statements of employment and financial interest:

(a) Employees classified at GS-13 or above who are in positions identified in the appendix to this part as positions the incumbents of which are responsible for making a Government decision or taking a Government action in regard to:

(1) Contracting or procurement;

(2) Administering or monitoring grants or subsidies;

(3) Regulating or auditing private or other non-Federal enterprise; or

(4) Other activities where the decision or action has an economic impact on the interest of any non-Federal enterprise.

(b) Employees classified at GS-13 or above who are in positions which the Board has determined have duties and responsibilities which require the incumbent to report employment and financial interests in order to avoid involvement in a possible conflicts-of-interest situation and carry out the purpose of law, Executive order, Office of Personnel Management regulations and this part. The positions are identified in the appendix to this part.

(c) Employees classified below GS-13 who are in positions which otherwise meet the criteria in paragraph (b) or (c) of this section. These positions have been approved by the Office of Personnel Management as exceptions that are essential to protect the integrity of the Government and avoid employees involvement in a possible conflict-of-interest situation. These positions are included among those identified in Appendix A to this part.

§ 1152.735-402 Employee's complaint on filing requirement.

Employees have the opportunity for review through the Board's grievance procedures of a complaint by an employee that his/her position has been improperly included under these regulations as one requiring the submission of a statement of employment and financial interests.

§ 1152.735-403 Employees not required to submit statements.

(a) Employees in positions that meet the criteria in § 1152.735-401(b) may be excluded from the reporting requirement when the Executive Director determines that:

(1) The duties of a position are such that the likelihood of the incumbent's involvement in a conflict-of-interest situation is remote;

(2) The duties of a position are at such a level of responsibility that the submission of a statement of employment and financial interests is not necessary because of the degree of supervision and review over the incumbent or the inconsequential effect on the integrity of the Government.

(3) The use of an alternative procedure approved by the Board is adequate to prevent possible conflicts of interest.

(b) A statement of employment and financial interests is not required by this subpart from the Chairperson or a full-time member of a committee, board, or commission appointed by the President. These employees are subject to separate reporting requirements under the Ethics and Government Act of 1978, Pub. L. 95-521.

§ 1152.735-404 Time and place for submission of employees' statement.

(a) An employee required to submit a statement of employment and financial interest pursuant to § 1152.735-401 and Appendix A to this part shall submit that statement on Statement of Employment and Financial Interest (a copy of which is attached in Appendix B)[1] to the Executive Director not later than:

(1) Ninety days after the effective date of this part if employed on or before that effective date; or

(2) Thirty days after his/her entrance on duty, but not earlier than 90 days after the effective date, if appointed after that effective date.

(b) Additions to, deletions from, and other amendments of the list of positions in the appendix to this part may be made from time to time as necessary to carry out the purpose of the law, Executive Order 11222, Part 735 of the Office of Personnel Management Regulations (5 CFR Part 735), and this part. Such amendments are effective upon actual notification to the incumbents. The amended list shall be submitted at least annually for publication in the FEDERAL REGISTER.

(c) All employees shall submit their statements directly to the Executive Director for review and custody. Such statements shall be enclosed in sealed envelopes marked "Standards of Conduct—Administratively Confidential".

§ 1152.735-405 Supplementary statement.

(a) Changes in, or additions to, the information contained in an employee's statement shall be reported to the Executive Director in a supplementary statement as of June 30 each year. If no changes or additions occur, a negative report is required.

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[1] See 44 FR 52204, Sept. 7, 1979.

(b) Notwithstanding the filing of the annual report required by this section, each employee shall at all times avoid acquiring a financial interest or engaging in outside employment or other activity that could result, or taking an action that would result, in a violation of the conflict-of-interest provisions of section 208 of Title 18, United States Code, or Subpart B of this part.

§ 1152.735-407 Information not known by employees.

If any information required to be included on a statement or supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit information in his/her behalf.

§ 1152.735-408 Information not required.

This subpart does not require an employee to report information relating to his/her connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise. For the purpose of this Section, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed "business enterprises" and are required to be included in an employee's statement.

§ 1152.735-409 Confidentiality of employees' statements.

(a) Each statement of employment and financial interests, and each supplementary statement, shall be held in confidence by the Board. To insure this confidentiality, the Office of Personnel Management regulations provide that:

(1) The Board shall designate which officials and employees are to review and retain the statements;

(2) Officials and employees designated under paragraph (a)(1) of this section are responsible for maintaining the statements in confidence and shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this part; and

(3) The Board may not disclose information from a statement except as the Office of Personnel Management or the Chairperson may determine for good cause shown.

(b) For the purpose of carrying out the provisions of paragraph (a)(1) of this section, the Executive Director shall review and retain employees' statements.

§ 1152.735-410 Effect of employee's statements on other requirements.

The statements and supplementary statements required of employees pursuant to this part are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of a statement or supplementary statement by an employee does not permit him/her or any other person to participate in a matter in which his/her or the other person's participation is prohibited by law, order, or regulation.

§ 1152.735-411 Specific provisions for special Government employees.

(a) Except as provided in paragraph (c) of this section, each special Government employee shall submit to the Executive Director for review and custody Statement of Employment and Financial Interest (See Appendix B).[1]

(b) The provisions of §§ 1152.735-407 through 1152.735-410 are applicable to a special Government employee who is required to file a statement.

(c) The Chairperson or his/her designee may waive the provisions of this section for the submission of a statement in the case of a special Government employee who is not a consultant or an expert when the Board finds that the duties of the position held by that special Government employee are of a nature and at such level of responsibility that the submission of the statement by the incumbent is not necessary to protect the integrity of the Government. For the purpose of this paragraph, "consultant" and

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[1] See 44 FR 52204, Sept. 7, 1979.

"expert" have the meanings given those terms by Chapter 304 of the Federal Personnel Manual, but do not include:

(1) A physician, dentist, or allied medical specialist whose services are procured to provide care and service to patients; or

(2) A veterinarian whose services are procured to provide care and service to animals.

(3) A specialist appointed for intermittent confidential intelligence consultation of brief duration.

(d) A statement of employment and financial interest required to be submitted under this section shall be submitted not later than the time of employment of the special Government employee. Each special Government employee shall keep his/her statement current throughout his/her employment with the Board by the submission of supplementary statements.

Appendix A—List of Positions Subject to Subpart D

Officers and employees in the following positions are subject to the provisions of Subpart D of this part:

Chairperson
Board Members
Liaison Officers
Executive Director
Administrative Officer
Director, Office of Compliance and Enforcement
Director, Office of Public Information
Director, Office of Technical Services
Director, Office of Policy, Planning, and Program Development
Program Analysts.

PART 1153—AUTHORITIES AND DELEGATIONS

Sec.

1153.1 The Board.
1153.2 Chair.
1153.3 Vice Chair.
1153.4 Executive Director.
1153.5 General Counsel.
1153.6 Committees of the Board.
1153.7 Chief Procurement Officer.
1153.8 Equal employment opportunity.
1153.9 Freedom of Information Officer.
1153.10 Delegations records.

Authority: 29 U.S.C. 792, as amended.

Source: 53 FR 19777, May 31, 1988, unless otherwise noted.

§ 1153.1 The Board.

The Board is the governing body of the agency. The composition of the Board and its functions are established by section 502 of the Rehabilitation Act of 1973. The Board has the following duties and responsibilities, including:

(a) To carry out its responsibilities under section 502 of the Rehabilitation Act of 1973, as amended. In carrying out these responsibilities, the Board may hold public hearings throughout the country.

(b) To establish policies and issue regulations in accordance with its statutory mandate.

(c) To resolve issues that are within its jurisdiction.

(d) To determine and adopt a contracting and procurement policy for the agency. In carrying out this responsibility, the Board will enter into contracts only in accordance with its contracting and procurement policy, published in the Federal Register.

(e)(1) To effect the prompt and efficient disposition of all matters within its jurisdiction. In carrying out this responsibility, the Board may in accordance with Article VI of its Statement of Organization and Procedures:

(i) By majority vote delegate to the Executive Committee authority to implement its decisions.

(ii) By two-thirds vote delegate to the Executive Committee any other of its authorities, to the extent permitted by law.

(iii) To the extent permitted by law, delegate other duties to its officers, committees, or staff by a vote of two-thirds of the membership of the Board at the time the vote is taken.

(2) A separate delegation is necessary for each action the Board desires the Executive Committee to implement. Unless so permitted in the original delegation, an officer, committee, or staff person shall not redelegate authority.

(f) To make to Congress, at the end of each fiscal year, an annual report of the Board's activities during that fiscal year. The annual report shall include such material as it is required by law to include and such other material as the Board may decide.

(g) To make to the President and Congress such other reports as it is required by law to make, and such recommendations as it considers necessary or desirable to eliminate environmental barriers confronting handicapped individuals.

(h) To allocate funds appropriated by the Congress for such activities as conducting investigations and surveys, initiating public hearings, collecting data on past and current studies, and providing stenographic or other services, as necessary, appropriate, and in accordance with law.

(i) To determine the jurisdiction of each standing committee of the Board.

§ 1153.2 Chair.

The Chair represents the Board as the head of the agency, whenever an applicable Federal statute or regulation imposes a duty or grants a right or authority to the head of the agency. The Chair or his or her designee has the following duties and responsibilities:

(a) To coordinate and organize the work of the Board in such a manner as to promote the prompt and efficient disposition of all matters within the jurisdiction of the Board. In carrying out these responsibilities, the Chair is delegated the authority to:

(1) Supervise the Executive Director.

(2) Direct the Executive Director concerning appropriate action to implement decisions of the Board.

(3) Evaluate the Executive Director's performance, and approve performance evaluations of employees who report directly to the Executive Director. A delegation of this authority may only be made to the Vice-Chair of the Board.

(4) Authorize domestic travel for the Executive Director, which authority may be delegated, and authorize foreign travel for staff, Board members and the Executive Director, which authority may not be delegated.

(5) Make necessary administrative decisions for the agency and direct the Executive Director concerning implementation of such decisions during periods when the Board is not in session.

(6) Review and approve publication of the Board newsletter and press releases which contain expressions of Board policy.

(7) Appoint members to the Board's subject matter committees.

(8) Nominate one or more Board members to serve, with their consent, at each public hearing which may be held by the Board.

(9) Request from departments or agencies represented on the Board such technical, administrative, or other assistance as may be required to carry out the Board's activities.

(10) Nominate the General Counsel and Executive Director, who are to be confirmed by the Board.

(b) To preside at all meetings and sessions of the Board.

(c) To establish the Board meeting agenda subject to the approval of the Executive Committee.

(d) To represent the Board in all matters relating to congressional testimony and legislative reports. However, any other Board member may present his or her own or minority views on supplemental reports.

(e) To represent the Board in all matters involving submissions of comments on agencies' proposed regulations and responses to published directives of the Office of Management and Budget. The Board shall be given advance written notice of any action taken under this authority. The Chair may file comments on agencies' draft notices of proposed rulemaking (NPRMs), published NPRMs, final rules, other notices published in the FEDERAL REGISTER, only with advance approval of the Executive Committee.

(f) To call a special meeting of the Board at the request of the Executive Committee, to take action on a request to the Board to enter litigation as amicus curiae.

(g) To maintain ongoing liaisons with constituency groups and other organizations and with staff of interested congressional committees to keep them informed of general Board policies and activities and to obtain information for use by the Board in formulating policy, developing budget requests, and drafting recommended legislative changes.

(h) To carry out other duties and responsibilities as may be delegated by the Board.

[53 FR 19777, May 31, 1988, as amended at 54 FR 32338, Aug. 7, 1989]

§ 1153.3 Vice Chair.

The Vice Chair shall, in the absence of the Chair from a Board meeting, or in the event of his or her death or disqualification, perform the duties and exercise the powers of the Chair, and shall generally assist the Chair and perform such other duties as may be directed by the Chairperson or the Board. The Vice-Chair shall serve as Chair of the Executive Committee.

§ 1153.4 Executive Director.

The Executive Director is nominated by the Chair and confirmed by the Board and is responsible to the Board under the supervision of the Chair. He or she has the following duties and responsibilities:

(a) To assist the Chair in carrying out the administrative and executive responsibilities of the Chair in a manner that may be directed by the Chair. These duties may include acting as the administrative head of the agency and in connection therewith assisting in the planning, directing, coordinating, and managing of the administrative affairs of the Board. In carrying out these responsibilities, the Executive Director may exercise authority delegated to him or her in accordance with the Board's contracting and procurement policy published in the FEDERAL REGISTER. In addition, the Executive Director is delegated the authority to:

(1) Authorize travel expenses for consultants, specialists, experts, witnesses, and other persons whose presence is deemed essential for attendance at Board meetings, hearings, advisory committee meetings or other functions of the Board.

(2) Reimburse members of the board who are not regular fulltime employees of the United States for travel, subsistence, and other necessary expenses incurred in carrying out their duties.

(b) To recommend to the Chair of the Board, matters that should be considered by the Board or any of its designated committees.

(c) To review with the Board and with heads of the several units and offices, the program and procedures of the Board and to make recommendations thereon as may be necessary to administer section 502 of the Rehabilitation Act of 1973 most effectively in the public interest.

(d)(1) To provide administrative leadership, and supervision and management of staff activities in carrying out the policies and decisions of the Board under the direction and supervision of the Chair. Supervision of staff includes:

(i) Authority to detail, reassign and train all staff, hire, fire and promote staff except as prescribed in § 1153.2(a)(10) herein.

(ii) Evaluating the performance of all staff who report directly to the Executive Director and approving the performance evaluations of all other staff.

(iii) Advance approval of work activities which are outside the normal scope of the employee's job duties.

(iv) The utilization and assignment of staff in support of any Board member of Board committee.

(v) All other utilization and assignment of staff.

(2) In carrying out these responsibilities, the Executive Director is delegated the authority to authorize domestic travel for all staff, within the Board designated levels in the budget. Approval by the Chair of the Board is required for any travel expenditures above those designated levels.

(e) To direct compliance and enforcement activities in accordance with the procedures set forth in 36 CFR Part 1150 including:

(1) Issuing citations and determinations not to proceed.

(2) Conducting negotiations for compliance, and entering into agreements for voluntary compliance.

(3) All other actions authorized by law pertaining to compliance and enforcement not otherwise reserved to the Board by 29 U.S.C. 792.

(4) Issuing staff manuals which have been approved by the Board, to provide guidance to staff in interpreting the Architectural Barriers Act of 1968

and section 502 of the Rehabilitation Act of 1973, as amended, and standards and guidelines issued pursuant to those Acts. Positions taken in any such manuals will not be inconsistent with established Board policy, and administrative and court rulings, to the maximum extent possible. The manuals will be for staff guidance and will be available to the public upon request.

(f) To direct and supervise the development and execution of routine technical assistance and public information programs, as authorized by law. These activities may be carried out in cooperation with state and local government units, other Federal agencies, and interested consumer groups. Public information program initiatives other than routine program activities shall be approved by the Board in advance.

(g) To provide special administrative assistance to the Board at the request of the Chair.

(h) To direct investigation and research of initiatives submitted by staff or Board members regarding technical assistance or other Board functions.

(i) To propose and implement changes in the functional organization of the Board staff offices, following a written notification to the Board of the nature and reasons for the proposed changes. Personnel actions necessary to implement such changes shall not be approved until there has been a meeting of the Board, following the Board's written notification of the changes.

(j) To submit biweekly reports to the Chair.

(k) To incorporate proposed revisions in the minutes if corrections or additions have be submitted, and present both the original and the corrected minutes to the Board for final approval. The Executive Director shall distribute the approved minutes within the (10) days after approval to: (1) Board members; (2) the House Education and Labor Committee, the House Public Works and Transportation Committee, the Senate Labor and Human Resources Committee, and the Senate Environment and Public Works, Committee; and make minutes available to others upon request.

(l) To refer correspondence by the Board which involves a specific department or agency, to that department or agency for reply.

(m) To account to the Board for the administration of program expenditures and keep records which disclose disposition of any funds and the nature and extent of the Board's activities.

(n) To report semi-annually, in writing, to the Board on each procurement regardless of amount entered into the date in the fiscal year, listing each procurement separately with its amount and date. In addition, the report shall list all procurements then in progress that have not been awarded and any procurements being considered for any future time.

(o) To maintain and keep current a separate file containing all delegations of authority, which shall be in writing, and provide copies of all delegations to the Board as they occur.

[53 FR 19777, May 31, 1988, as amended at 54 FR 32338, Aug. 7, 1989]

§ 1153.5 General Counsel.

The General Counsel is nominated by the Chair and confirmed by the Board. He or she is responsible to the Board under the supervision of the Executive Director. The General Counsel has the following duties and responsibilities:

(a) To coordinate and organize the work of the legal staff in order to provide prompt and comprehensive legal advice to the Board.

(b) To provide legal interpretation of statutes, regulations, and rules of procedure for the Board's consideration.

§ 1153.6 Committees of the Board.

(a) *Committee chairs.* The Vice-Chair of the Board shall be the chair of the Executive Committee. The subject matter committee chairs are elected annualy by the Board. They have the following duties and responsibilities:

(1) To preside at all meetings of their respective committees.

(2) The chair of the Planning and Budget committee will ensure that work on each Board budget is begun no later than 21 months prior to the

date on which the budget is to become operative.

(b) *Executive Committee.* The Executive Committee has the following duties and responsibilities:

(1) To report directly to the Board on matters submitted to the Executive Committee by members and subject matter committees, and all other matters that are within its jurisdiction:

(2) To review and consider recommendations and proposals from the various subject matter committees, and take appropriate action thereon. This may result in recommending to the Chair of the Board that a proposal be placed on the Board agenda for Board action, or referring it back to the subject matter committee for further refinement of its proposals or revision of its reports, or referring it to another committee for appropriate actions.

(3) To issue recommendations to the Chair of the Board concerning proposals on the agenda.

(4) To review the Board's agenda as established by the Chair of the Board.

(5) To assist the Chair in other circumstances at his or her request.

(6) To arrange joint meetings among the appropriate subject matter committees whenever two or more committees have concurrent jurisdiction over a matter, or other related responsibilities.

(7)(i) To review requests to the Board to enter litigation as amicus curiae.

(ii) In carrying out these responsibilities, the Executive Committee is delegated the authority to disapprove such requests and make recommendations to the Board to approve such requests. Board approval shall be required prior to any amicus filing. The Committee may request the Chair of the Board to call a special meeting of the Board to expedite Board action on the Committee's recommendations.

(8) To review and make recommendations to the Board to amend or approve the Board's statement of organization and procedures, formal policy statements, and authorities and delegations.

(9) To carry out other duties and responsibilities as may be duly delegated by the Board.

(c) *Subject matter committees.* Each subject matter committee studies and reports to the Board on matters that are within the subject matter committee's province, and has the following duties and responsibilities:

(1) To review and consider recommendations or proposals submitted by Board members, committees, and other individuals and entities.

(2)(i) To identify issues and develop policy recommendations for review by the Executive Committee. This includes further refinement of matters that are referred from the Executive Committee, and submission of reports containing recommendations or proposals on which action is to be taken by the Board.

(ii) In carrying out these responsibilities, each subject matter committee is delegated the authority to arrange briefings, and research by designated staff, experts, or Federal member agency staff through requests to the Chair or the Executive Director, whichever is appropriate.

(3) To formulate and present projections of matters to be undertaken by the committee to the Planning and Budget Committee.

(4) To project and formulate the need for staff assistance in performing the committee's functions.

(5) To report, at the direction of the Chair of the Board or the committee, the status of matters that are within the committee's particular jurisdiction.

(6) To advise the Board to forward materials originating within the subject matter committee to another committee with jurisdiction over the matter involved.

(d) *Special Committees.* A Special Committee has the duties and responsibilities specified by its creator, who shall report the names of its members and chair to the Chair of the Board.

[53 FR 19777, May 31, 1988, as amended at 54 FR 32338, Aug. 7, 1989]

§ 1153.7 Chief Procurement Officer.

The Chief Procurement Officer is designated by the Head of the Procuring Activity in accordance with the Board's contracting and procurement policy published in the Federal Regis-

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TER. He or she has the following duties and responsibilities:

(a) To ensure that staff is provided with equipment and other basic supplies and services that are necessary to perform their duties.

(b) To report to the Head of the Procuring Activity in all other matters pertaining to the agency's needs for supplies and services.

§ 1153.8 Equal employment opportunity.

(a) The Director of Equal Employment Opportunity (EEO Director) is designated by the Chair. The EEO Director has the responsibility on a collateral duty basis, to carry out the functions of the EEO Director, Federal Women's Program Coordinator, Hispanic Employment Program Manager, and Handicap Program Coordinator, in accordance with regulations of the Equal Employment Opportunity Commission.

(b) For the purposes of 29 CFR 1613.221, the Chair of the Board shall make the final decision of the Board on a complaint based on information in the complaint file. The Chair may designate another Board member to discharge this responsibility. A person designated to make the decision for the head of the agency shall be one who is fair, impartial and objective.

§ 1153.9 Freedom of Information Officer.

(a) The Board has the responsibility to disseminate information on matters of interest to the public and to disclose on request all information contained in records in its custody insofar as it is compatible with the discharge of its responsibilities and consistent with the Freedom of Information Act, as amended, 5 U.S.C. 552 and the Board regulations "Public Availability of Information" (36 CFR part 1120).

(b) The Board designates the Executive Director as the Freedom of Information (FOI) Officer. The FOI Officer has the responsibility for implementing the policies and procedures to ensure compliance with the requirements of the Freedom of Information Act and the Board regulations. The Executive Director may delegate that responsibility.

§ 1153.10 Delegations records.

All delegations authorized by these Authorities and Delegations shall be made in writing. Records of all such delegations will be maintained by the Executive Director in a separate file.

PART 1154—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Sec.

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AUTHORITY: 29 U.S.C. 794.

SOURCE: 52 FR 16380, May 5, 1987, unless otherwise noted.

§ 1154.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Service, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 1154.102 Application.

This part applies to all programs or activities conducted by the agency.

§ 1154.103 Definitions.

For purposes of this part, the term—

Agency means the Architectural and Transportation Barriers Compliance Board.

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids means service or devices that enable persons with impaired sensory, manual, and/or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephones handset amplifiers, telephone compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discriminations.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Handicapped person means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment thaqt substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in subparagraph (1) of this definition but is treated by the agency as having such an impairment.

Qualified handicapped person means—

(1) With respect to any agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that

the agency can demonstrate would result in a fundamantal alteration in its nature; and

(2) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

(3) Qualified Handicapped Person is defined for purposes of employment in 29 CFR 1613.702(f) which is made applicable to this part by § 1154.140.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

§§ 1154.104—1154.109 [Reserved]

§ 1154.110 Self-evaluation.

(a) By July 6, 1988, the agency shall evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, for all least three years following completion of the evaluation required under paragraph (a) of this section, maintain on file and make available for public inspection—

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

§ 1154.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and made such information available to them in such manner as the agency head finds necessary to apprise effectively such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 1154.112—1154.129 [Reserved]

§ 1154.130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or servcies to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate of different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§§ 1154.131—1154.139 [Reserved]

§ 1154.140 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally-conducted programs or activities.

§§ 1154.141—1154.148 [Reserved]

§ 1154.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 1154.150, no qualified handicapped person shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 1154.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons; or

(2) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 1154.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by

the agency head or his/her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualfied handicapped persons in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by September 4, 1987 except that where structural changes in facilities are undertaken, such changes shall be made by July 6, 1990, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop by January 6, 1988, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementatin of the plan.

§ 1154.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements and standards of the Architectural Barriers Act (42 U.S.C. 4151-4157), as established in 41 CFR 101-19.600 to 101-19.607, apply to buildings covered by this section.

§§ 1154.152—1154.159 [Reserved]

§ 1154.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, the program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants, beneficiaries, and members of the public by telephone, telecommunications devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested person, including persons with impaired vision, speech or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens.

In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 1154.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his/her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

[52 FR 16380, May 5, 1987, as amended at 53 FR 24265, June 28, 1988]

§§ 1154.161—1154.169 [Reserved]

§ 1154.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) Responsiblity for implementation and operation of this section shall be vested in the Equal Employment Opportunity Director.

(d) Complaints may be delivered or mailed to the Equal Employment Opportunity Director, ATBCB, 330 C Street, SW., Rm. 1010, Washington, DC 20202.

(e) The agency shall accept and investigate all complete complaints over which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(f) If the Equal Employment Opportunity Director receives a complaint that is not complete, he or she shall notify the complainant, within 30 days of receipt of the incomplete complaint, that additional information is needed. If the complainant fails to complete the complaint within 30 days of receipt of this notice, the Equal Employment Opportunity Director shall dismiss the complaint without prejudice, and shall notify the complainant of such dismissal.

(g) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(h) The agency shall notify the Director of the Compliance and Enforcement Division of any complaint alleging that a building or facility is not readily accessible to and usable by handicapped persons. The Director of the Compliance and Enforcement Division shall determine whether or not the building or facility is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792).

(i) Within 180 days of the receipt of a complete complaint over which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(j) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § 1154.170(g). The agency may extend this time for good cause.

(k) Timely appeals shall be accepted and processed by the head of the agency.

(l) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he/she shall have 60 days from the date of receipt of the additional information to make his/her determination on the appeal.

(m) The time limits cited in paragraphs (i) and (l) of this section may be extended with the permission of the Assistant Attorney General.

(n) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

PART 1155—STATEMENT OF ORGANIZATION AND PROCEDURES

Sec.
1155.1 Organization and membership.
1155.2 Board meetings.
1155.3 Committees.
1155.4 General Counsel.
1155.5 Fiscal accountability.
1155.6 Delegations.
1155.7 Amendments to the Statement of Organization and Procedures.
1155.8 Amendments to the authorities and delegations.

AUTHORITY: 29 U.S.C. 792, as amended.

SOURCE: 53 FR 19780, May 31, 1988, unless otherwise noted.

§ 1155.1 Organization and membership.

(a) *Name and organization.* The name of this organization is the Architectural and Transportation Barriers Compliance Board (hereinafter referred to as the "Board") as provided in section 502 of the Rehabilitation Act of 1973.

(b) *Authorization for the Board.* The statutory authorization for the Board is section 502 of the Rehabilitation Act of 1973, as amended.

(c) *Officers of the Board.* The presiding officers of the Board shall be a Chair and in his or her absence or disqualification a Vice-Chair. The Chair and Vice-Chair shall be elected by a majority of the fixed membership of the Board and shall serve for terms of one year. When the Chair is a member of the general public, the Vice-Chair shall be a Federal official; and when the Chair is a Federal official, the Vice-Chair shall be a member of the general public. Upon the expiration of the term as Chair of a member who is a Federal official, the subsequent Chair shall be a member of the general public; and vice versa. If no new Chair of Vice-Chair has been elected at the end of the one-year term, the incumbents shall continue to serve in that capacity until a successor Chair or Vice-Chair has been elected.

(d) *Membership.* The Board shall be composed of Presidentially appointed public members and the heads of each of the following departments or agencies (or their designees whose positions (or acting positions) are Executive Level IV or higher):

(1) Department of Education;

(2) Department of Health and Human Services;

(3) Department of Transportation;

(4) Department of Housing and Urban Development;

(5) Department of Labor;

(6) Department of Interior;

(7) Department of Defense;

(8) Department of Justice;

(9) General Services Administration;

(10) United States Postal Service; and

(11) Department of Veterans Affairs.

(e) *Board vacancies.* (1) If any public member becomes a Federal employee, such member may continue as a member of the Board for not longer than the sixty-day period beginning on the day he or she becomes such an employee.

(2) If any public member is unable to fulfill his or her obligation as a member, the member shall notify the Chair and the President.

(3) A public member appointed to fill a vacancy shall serve for the remainder of the term to which that member's predecessor was appointed.

(4) A public member whose term has expired may continue to serve until a successor has been appointed.

[53 FR 19780, May 31, 1988, as amended at 54 FR 32338, Aug. 7, 1989]

§ 1155.2 Board meetings.

Regular meetings of the Board shall ordinarily be held on the Wednesday following the second Tuesday of every other month, except as otherwise provided in paragraphs (a) (2) and (4) of this section. Whenever possible, all business shall be transacted at the regular meeting. The Board may elect to convene in executive sessions.

(a) *Prior notification.* (1) The Chair shall provide written notice of scheduled Bo[illegible]eetings, and an agenda for the meeting, including supporting materials, to each Board member, ten (10) work days prior to the meeting.

(2) The Chair may cancel a regular meeting of the Board by giving written notice of the cancellation in place of the written notice of the scheduled Board meeting at least ten (10) work days prior to the meeting.

(3) Special meetings of the Board shall be called by the Chair to deal with important matters arising between regular meetings which require urgent action by the Board prior to the next regular meeting. Voting and discussion shall be limited to the subject matter which necessitated the call of the special meeting. All Board members shall be notified of the time, place, and exact purpose of the special meeting a reasonable time in advance.

(4) The Chair may reschedule a regular meeting of the Board to another date, no more than one month earlier or later than the regularly scheduled date.

(b) *Attendance.* (1) If a Board member is unable to attend a regularly scheduled meeting, he or she shall notify the Executive Director at his or her earliest convenience.

(2) A list of Board members present and those Board members absent shall become a part of the permanent record through its inclusion in the minutes.

(3) In order to maintain an orderly meeting, discussion shall be among Board members and the Executive Director. Board staff and Federal member staff may participate in the discussion of a specific issue only at the request of a Board member present at the meeting or the Executive Director, and upon recognition by the Chair.

(c) *Rules for Board meetings.* (1) Meetings of the Board shall be held in accordance with Robert's Rules of Order, except as otherwise prescribed herein.

(2) The Board shall not suspend the rules in taking an action concerning adoption, amendment or rescission of this Statement of Organization and Procedures nor the Board's Authorities and Delegations.

(d) *Quorum.* (1) A quorum shall be the majority (12) of the fixed membership. At least six of the members required for a quorum shall be public members.

(2) Proxies shall not be counted for purposes of establishing a quorum.

(3) The presiding officer shall not call a meeting to order unless a quorum is present. If at anytime during the meeting the Chair or a

member notices the absence of a quorum, it shall be his or her duty to declare the fact. However, debate on a question pending may continue after a quorum is not longer present.

(4) In the absence of a quorum the Board members present may move to recess in order to contact absent members and solicit their attendance.

(e) *Voting procedure.* (1) Only Board members or Federal member designees, Executive Level IV or higher, may vote.

(2) Except as otherwise prescribed herein, at a meeting at which there is a quorum a majority vote of the members present in person or by proxy is necessary for action by the Board.

(3) The presiding officer shall have the same right to vote as any other member.

(4) *Proxy voting.* (i) Except as provided in § 1155.2 (d)(2) and (e)(4)(iv) of this section, proxy voting shall be permitted.

(ii) Any member may give his or her directed or undirected proxy to any other Board member or any Federal member designee, Excutive Level IV or higher, present at the meeting.

(iii) Proxies are to be given in writing and submitted to the Chair prior to or at the meeting.

(iv) A directed proxy shall be voided as to a specific issue if the question on which the vote is eventually taken differs from the question to which the proxy is directed.

(5) A requirement of a ⅔ vote shall mean ⅔ of the members present in person or by proxy, at a meeting at which there is a quorum, except as provided in §§ 1155.6(b), 1155.7 and 1155.8 of this part.

(f) *The order of business.* Except as otherwise prescribed herein, a proposal for Board action cannot be considered by the Board unless it is placed on the agenda by the Chair of the Board, with the approval of the Executive Committee.

(g) *The basic procedures.* (1) Any member wishing to submit a proposal for Board action will submit it directly to the Chair of the Board, by delivering copies of the proposal to the Board office, addressed to the Chair of the Board. Upon receiving a proposal from a Board member, the Chair may direct the Executive Director to forward copies of the proposal to appropriate subject matter committee(s) and/or the Executive Committee.

(2) Upon receipt of a proposal from a Board member, or a proposal originating from within a committee, subject matter committees will review the proposal, including determining whether the proposal is within their jurisdiction, and, if so, identifying the issues involved, and refining the proposal. Committees may request a report from staff or the member submitting the proposal. Each committee taking any action on the proposal will submit it with an accompanying report and recommendations to the Chair of the Board.

(3) The Chair may take action on a member's proposal without receiving a report from a subject matter committee when, after reviewing the proposal, he or she determines that the proposal does not need further development for Board consideration. The Chair's review may include requesting a report from staff or the member submitting the proposal, or calling a meeting of the Executive Committee.

(4) When the Chair of the Board receives a recommendation from the subject matter committee, the Chair will review the recommendation and take appropriate action thereon. This may result in placing the recommendation on the next Board agenda or sending it back to the subject matter committee or to another committee, for appropriate action.

(h) *Agenda.* The Chair places items of business on the Board agenda. A written notice of ten (10) work days to the full Board is required for an item to become part of the Board's agenda. The ten (10) days notice requirement may be waived upon a two-thirds vote by the Board to suspend the rules of order.

(i) *Discharge procedure.* Seventy-five (75) days after a proposal is first received by the Chair of the Board, any member has a right to discharge the proposal. For purposes of this paragraph, a proposal is received by the Chair the day it is delivered to the Chair at the Board office. In order to exercise a discharge, the discharging member must provide written notice to the Chair of the Board, the Executive Committee, appropriate subject matter committee(s) and the Executive Director thirty (30) days prior to the next Board meeting. Upon the Chair's receipt of a timely discharge notice, the proposal must be placed on the next regular Board agenda.

(j) *Corrections, additions, or approval of Board minutes.* (1) The Executive Director shall send draft minutes of the previous meeting to each Board member within fifty (50) days following the meeting. Any corrections shall be submitted orally or in writing at or before the next Board meeting.

(2) The Board will approve the final minutes after all corrections and additions have been incorporated.

(k) *Notational voting.* The Board may act on items of business by notational voting. At the request of the Chair, the Executive Director shall send a written ballot to each Board member describing each matter submitted for notational voting. If any Board member requests discussion on an item, the ballots shall not be counted and the Chair shall place the item on the next Board meeting agenda for discussion and voting.

[53 FR 19780, May 31, 1988, as amended at 54 FR 32338, Aug. 7, 1989; 55 FR 12639, Apr. 5, 1990]

§ 1155.3 Committees.

The Board may, by a two-thirds vote, establish or dissolve standing committees, and change the number, size and jurisdiction of standing committees. Meetings of the committees shall be held in accordance with Robert's Rules of Order, except as otherwise prescribed herein. The use of proxies shall be prohibited at Executive and subject matter committee meetings except as otherwise prescribed herein. A Committee may establish its own additional procedures provided that they do not conflict with the provisions of this Statement, and the Committee informs the Chair of the Board in writing of any additional procedures.

(a) *Executive Committee*—(1) *Composition.* The Executive Committee shall be composed of six members, three Federal and three public members, which shall include the Chair and the Vice-Chair of the Board and the chairs of each of the two subject matter committees and two at large members. The two at large members shall balance the number of Federal and public members and shall be elected annually by the Board after the election of the Chair and Vice-Chair of the Board and the chairs of the two subject matter committees. Its chair shall be the Vice-Chair of the Board.

(2) *Quorum.* A quorum in the Executive Committee shall be four members, present in person. In the absence of a quorum, a meeting can be held only for the purpose of discussion and no vote may be taken.

(3) *Voting.* Only members of the committee may vote in the committee meetings. Any other Board member may attend and participate in the meeting, but may not vote.

(4) *Request for legal opinion from the Department of Justice.* The Executive Committee may, by a majority vote, seek legal advice on any matter from the Office of Legal Counsel, United States Department of Justice. The Board shall not be bound by the opinion of the Office of Legal Counsel.

(b) *Subject matter committees*—(1) *Composition.* Each subject matter committee shall be comprised of seven members. The Chair of each committee shall be elected annually by the Board. The Chair of the Board will appoint six additional members to each subject matter committee for a total of seven members in each. Each chair of each committee, may appoint an acting chair when the chair is absent.

(2) *Terms.* The members of each committee will serve a term of one year corresponding to that of the chair, and continue their duties until their successors have been appointed.

(3) *Quorum.* A quorum in a subject matter committee shall be four members, present in person or, in the case of Federal members, the liaison may represent the Federal member in subject matter committees for the limited purpose of establishing a quorum. In the absence of a quorum, a meeting may be held only for the purpose of discussion.

(4) *Voting.* Only committee members may vote in the committee meetings. Any other Board member, agency

staff and the Board staff may attend and participate in meetings but may not vote.

(c) *Special committees.* The Chair, the Board, or a standing committee may appoint a special committee to carry out a specific task. A special committee shall dissolve upon completion of its task or when dissolved by its creator. A special committee shall be governed by the same rules and procedures applicable to subject matter committees unless otherwise prescribed.

(d) *Minutes.* Each Committee will keep a written record of the proceedings.

[53 FR 19780, May 31, 1988, as amended at 54 FR 32338, Aug. 7, 1989]

§ 1155.4 General Counsel.

(a) The General Counsel is nominated by the Chair and confirmed by the Board. He or she is responsible to the Board under the supervision of the Executive Director.

(b) The General Counsel shall attend Board meetings and provide legal counsel when requested or when he or she deems it advisable and upon recognition by the Chair.

§ 1155.5 Fiscal accountability.

Board funds shall not substitute for resources an agency should spend for activities under its own research and development or other programmatic or adminsitrative authority. However, the Board may augment current studies by additional funding to insure a focus for particular information on barriers confronting handicapped individuals.

§ 1155.6 Delegations.

(a) The Board may—

(1) By majority vote delegate to the Executive Committee authority to implement its decisions, and

(2) By two-thirds vote delegate to the Executive Committee any other of its authorities, to the extent permitted by law. A separate delegation is necessary for each action the Board desires the Executive Committee to implement.

(b) The Board may, to the extent permitted by law, delegate other duties to its officers, committees, or staff by a vote of two-thirds of the membership of the Board at the time the vote is taken.

(c) Unless so permitted in the original delegation, an officer, committee, or staff person shall not redelegate authority.

§ 1155.7 Amendments to the Statement of Organization and Procedures.

In order to adopt and amend the Statement of Organization and Procedures, a vote of two-thirds of the membership of the Board at the time the vote is taken shall be required.

§ 1155.8 Amendments to the authorities and delegations.

In order to adopt and amend the Authorities and Delegations, a vote of two-thirds membership of the Board at the time the vote is taken shall be required.

PART 1190—MINIMUM GUIDELINES AND REQUIREMENTS FOR ACCESSIBLE DESIGN

Subpart A—General

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1190.1 Purpose.
1190.2 Applicability: Buildings and facilities subject to guidelines and standards.
1190.3 Definitions.
1190.4 Issuance of Architectural Barriers Act standards by standard-setting agencies.
1190.5 Guidelines: Other uses.
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Subpart B—Scope

1190.30 Scope. [Reserved]
1190.31 Accessible buildings and facilities: New construction.
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Subpart C—Technical Provisions

1190.40 Technical specifications.
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Sec.

Subpart D—Special Building or Facility Types or Elements

1190.60 Special building or facility types.

AUTHORITY: Sec. 502(b), Rehabilitation Act of 1973 (29 U.S.C. 792(b)(7)), as amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Sec. 119, Pub. L. 602, 92 Stat. 2982, and the Rehabilitation Act Amendments of 1986 (Pub. L. 99-506, 100 Stat. 1801).

SOURCE: 47 FR 33864, Aug. 4, 1982, unless otherwise noted.

Subpart A—General

§ 1190.1 Purpose.

The purpose of this part is to implement section 502(b)(7) of the Rehabilitation Act of 1973 (29 U.S.C. 792(b)(7)), as amended, which requires the Architectural and Transportation Barriers Compliance Board to establish minimum guidelines and requirements for standards issued under the Architectural Barriers Act of 1968 (42 U.S.C. 4151 *et seq.*), as amended. This part and the standards to be based on it are intended to ensure that certain buildings and facilities financed with Federal funds are designed, constructed, or altered so as to be readily accessible to, and usable by, physically handicapped persons.

§ 1190.2 Applicability: Building and facilities subject to guidelines and standards

(a) *Definitions.* As used in this section, the term:

(1) *Constructed or altered on behalf of the United States* means constructed or altered for purchase by the United States, or constructed or altered for the use of the United States.

(2) *Primarily for use by able-bodied military personnel* means expected to be occupied, used, or visited principally by military service personnel. Examples of buildings so intended are barracks, officers' quarters, and closed messes.

(3) *Privately owned residential structures* means a single or multifamily dwelling not owned by a unit or subunit of Federal, state, or local government.

(b) *Buildings and facilities covered.* Except as provided in paragraph (c) of this section, the standards to be issued by the standard-setting agencies in conformance with these minimum guidelines and requirements apply as provided in paragraph (d) of this section to any building or facility—

(1) The intended use for which either—

(i) Will require that such building or facility be accessible to the public, or

(ii) May result in employment or residence therein of physically handicapped persons; and

(2) Which is—

(i) To be constructed or altered by or on behalf of the United States;

(ii) To be leased in whole or in part by the United States after August 12, 1968, and before January 1, 1977, after construction or alteration in accordance with plans and specifications of the United States;

(iii) To be leased in whole or in part by the United States on or after January 1, 1977;

(iv) To be financed in whole or in part by a grant or loan made by the United States after August 12, 1968, if the building or facility may be subject to standards for design, construction, or alteration issued under the law authorizing the grant or loan; or

(v) To be constructed under the authority of the National Capital Transportation Act of 1960, the National Capital Transportation Act of 1965, or Title III of the Washington Metropolitan Area Transit Regulation Compact.

(c) *Buildings and facilities not covered.* The guidelines and requirements and the standards do not apply to—

(1) Any privately owned residential structure, unless it is leased by the Federal government on or after January 1, 1977, for subsidized housing programs; or

(2) Any building or facility on a military installation designed and constructed primarily for use by able-bodied military personnel.

(d) *Application and effective date of standards.* Any covered building or facility, as provided in this section, which is designed, constructed, or altered after the effective date of a standard issued in conformance with this guideline which is applicable to the building or facility, shall be designed, constructed, or altered in accordance with the standard. Any other building or facility covered by the Architectural Barriers Act, if and when required by law, shall comply with such standards issued in conformance with this part as are appropriate.

[47 FR 33864, Aug. 4, 1982, as amended at 54 FR 5444, Feb. 3, 1989]

§ 1190.3 Definitions.

As used in this part, the term:

ATBCB means the Architectural and Transportation Barriers Compliance Board.

Access aisle means a pedestrian space between elements such as parking spaces, seating, and desks.

Accessible means in compliance with the specifications and requirements of any applicable standard issued by a standard-setting agency in conformance with this part. *Accessible* describes a site, building, facility, or portion thereof that complies with these requirements, and that can be approached, entered, and used by physically handicapped persons. Accessible elements and spaces of a building or facility including doors provided adjacent to a turnstile or a revolving door, shall be subject to the same use patterns as other elements and spaces of the building or facility.

Accessible route means a continuous unobstructed path connecting accessible elements and spaces in a building or facility and complying with the space and reach requirements of any standard issued by a standard-setting agency in conformance with this part. (Interior accessible routes may include but are not limited to corridors, floors, ramps, elevators, lifts, and clear floor space at fixtures. Exterior accessible routes may include but are not limited to parking access aisles, curb ramps, walks, ramps, and lifts.)

Accessible space means a space that complies with any standard issued by a standard-setting agency in conformance with this part.

Adaptability means the capability of certain building spaces and elements, such as kitchen counters, sinks and grab bars, to be altered or added to so as to accommodate the needs of persons with or without disabilities, or to accommodate the needs of persons with different types or degrees of disability.

Addition means an expansion, extension, or increase in the gross floor area of a building or facility.

Agency means a Federal department, agency or instrumentality, as defined in sections 551(1) and 701(b)(1) of Title 5, United States Code, or an official authorized to represent an agency.

Alteration means any change in a building or facility or its permanent fixtures or equipment. It includes, but is not limited to, remodeling, renovation, rehabilitation, reconstruction, changes or rearrangement in structural parts, and extraordinary repairs. It does not include normal maintenance, reroofing, interior decoration, or changes to mechanical systems.

Architectural Barriers Act means the Architectural Barriers Act of 1968, Pub. L. 90-480, as amended, 42 U.S.C. 4151 *et seq.*

Assembly area means a room or space accommodating fifty or more individuals for religious, recreational, educational, political, social, or amusement purposes, or for the consumption of food and drink, and including all connected rooms or spaces with a common means of egress and ingress. Such areas as conference and meeting rooms accommodating fewer than fifty individuals are not considered assembly areas.

Automatic door means a door—

(1) Used for human passage and

(2) Equipped with a power-operated mechanism and controls that open and close the door upon receipt of a momentary actuating signal.

Building or *facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, parks, sites, or other real property or interest in such property.

Circulation path means an exterior or interior way of passage from one place to another for pedestrians, including, but not limited to, walks, hallways, courtyards, stairways, and stair landings.

Clear means unobstructed.

Common use areas means those interior and exterior rooms, spaces or elements that are made available for the use of a restricted group of people (for example, residents of an apartment building, the occupants of an office building, or the guests of such residents or occupants).

Construction means any erection of a new building or of an addition to an existing building or facility.

Cross slope means the slope that is perpendicular to the direction of travel (see *running slope*).

Curb ramp means a short ramp cutting through a curb or built up to it.

Detectable means perceptible by one or more of the senses.

Detectable warning means a standardized surface texture applied to or built into walking surfaces or other elements to warn visually impaired people of hazards in the path of travel.

Dwelling unit means a single unit of residence that provides a kitchen or food preparation area, in addition to rooms and spaces for living, bathing, sleeping, and the like.
A single family home is a dwelling unit, and dwelling units are to be found in such housing types as townhouses and apartment buildings.

Egress or *means of egress* means a continuous and unobstructed way of exit travel from any point in a building or facility to an exterior walk or out of a fire zone. It includes all intervening rooms, spaces, or elements.

Element means an architectural or mechanical component of a building, facility, space, or site, *e.g.*, telephone, curb ramp, door, drinking fountain, seating, water closet.

Entrance means any access point to a building or portion of a building or facility used for the purpose of entering. An entrance includes the approach walk, the vertical access leading to the entrance platform, the entrance platform itself, vestibules if provided, the entry door(s) or gate(s), and the hardware of the entry door(s) or gate(s). The principal entrance of a building or facility is the main door through which most people enter.

Essential features means those elements and spaces that make a building or facility usable by, or serve the needs of, its occupants or users. Essential features include but are not limited to entrances, toilet rooms, and accessible routes. Essential features do not include those spaces that house the major activities for which the building or facility is intended, such as classrooms and offices.

Exception means a special provision in this part or in a standard which indicates an acceptable alternative, under specified circumstances, to a requirement stated directly above the exception.

Extraordinary repair means the replacement or renewal of any element of an existing building or facility for purposes other than normal maintenance.

Full and fair cash value is calculated for the estimated date on which work will commence on a project and means—

(1) The assessed valuation of a building or facility as recorded in the assessor's office of the municipality and as equalized at one hundred percent (100%) valuation (Note: The one hundred percent (100%) equalized assessed value shall be based upon the state's most recent determination of the particular city's or town's assessment ratio. Example: Town X has an assessment ratio of forty percent (40%), and the particular building in question is assessed at $200,000.00. To determine the equalized assessed value of this building, divide $200,000.00 by .40, and the equalized assessed value equals $500,000.00.);

(2) The replacement cost; or

(3) The fair market value.

Guidelines and requirements means this part.

Housing means a building, facility, or portion thereof, excluding inpatient health care facilities, that contains one or more dwelling units or sleeping accommodations. Housing may include, but is not limited to, one-family and two-family dwellings, multifamily dwellings, group homes, hotels, motels, dormitories, and mobile homes.

Marked crossing means a crosswalk or other identified path intended for pedestrian use in crossing a vehicular way.

Multifamily housing means a project containing five or more dwelling units.

Operable part means a part of equipment or an appliance used to insert or withdraw objects, to activate or deactivate equipment, or to adjust the equipment (*e.g.*, coin slot, push button, handle).

Physically handicapped person means an individual who has a physical impairment, including impaired sensory, manual, or speaking abilities, which results in a functional limitation in access to and use of a building or facility.

Power-assisted door means a door—

(1) Used for human passage; and

(2) With a mechanism that helps to open the door, or relieve the opening resistance of a door, upon the activation of a switch or a continued force applied to the door itself.

Public use means any interior and exterior rooms or spaces made available to the general public. Public use may be provided at a building or facility that is privately or publicly owned.

Ramp means a walking surface that has a running slope greater than 1:20.

Reconstruction means the act or process of reproducing by new construction the exact form and detail of a vanished building, structure, or object, or a part thereof, as it appeared at a specific period of time.

Restoration means the act or process of accurately recovering the form and details of a property and its setting as it appeared at a particular period of time by means of the removal of later works or by replacement of missing earlier work.

Running slope means the slope that is parallel to the direction of travel (see *cross slope*).

Section 502 of the Rehabilitation Act or *Section 502* means section 502 of the Rehabilitation Act of 1973, Pub. L. 93-112, 29 U.S.C. 792, as amended.

Service entrance means an entrance intended primarily for delivery or service.

Shall denotes a mandatory requirement.

Signage means the display of written, symbolic, tactile, or pictorial information.

Site means a parcel of land bounded by a property line or a designated portion of a public right-of-way.

Site improvements means landscaping, paving for pedestrian and vehicular ways, outdoor lighting, recreational facilities, and similar site additions.

Sleeping accommodations means rooms in which people sleep (for example, dormitory and hotel or motel guest rooms).

Space means a definable area, *e.g.*, toilet room, hall, assembly area, parking area, entrance, storage room, alcove, courtyard, or lobby.

Standard means any standard for accessibility issued under the Architectural Barriers Act.

Standard-setting agency means one of the four agencies required to issue standards under the Architectural Barriers Act, *i.e.*, the General Services Administration, the Department of Housing and Urban Development, the Department of Defense, and the United States Postal Service.

Structural impracticability means having little likelihood of being accomplished without removing or altering a load-bearing structural member and/or incurring an increased cost of 50 percent or more of the value of the element of the building or facility involved.

Tactile means perceptible through the sense of touch.

Temporary means elements are not permanent (*i.e.*, installed for less than six months) and are not required for safety reasons.

Walk means an exterior pathway or space with a prepared surface intended for pedestrian use and having a slope of 1:20 or less. It includes general pedestrian areas such as plazas and courts.

[47 FR 33864, Aug. 4, 1982, as amended at 54 FR 5444, Feb. 3, 1989]

§ 1190.4 Issuance of Architectural Barriers Act standards by standard-setting agencies.

(a) These guidelines and requirements are the minimum guidelines and requirements for standards issued under the Architectural Barriers Act by the Administrator of General Services, Secretary of Housing and Urban Development, Secretary of Defense, and Postmaster General.

(b) Standards which conform to or exceed the provisions of the guidelines shall be deemed in compliance with the guidelines and requirements.

(c) Each standard-setting agency is encouraged to issue standards which follow the format of these guidelines and requirements. However, standards which differ in format from these guidelines and requirements but are otherwise consistent with the guidelines and requirements shall be deemed in compliance with these guidelines and requirements.

§ 1190.5 Guidelines: Other uses.

These minimum guidelines and requirements and those standards published by the four standard-setting agencies under the Architectural Barriers Act of 1968, as amended, may be used by other governmental and nongovernmental entities, along with other sources, to develop their own standards.

§ 1190.6 Interpretation of guidelines.

(a) These guidelines and requirements shall be liberally construed to carry out the purposes and provisions of the Architectural Barriers Act and Section 502 of the Rehabilitation Act.

(b) Words importing the singular number may extend and be applied to the plural and vice versa. However, unless otherwise specified in the guidelines and requirements, each element or space of a particular building or facility shall comply with the guidelines and requirements.

(c) Use of the imperative mood, *e.g.*, "provide," means the provision is mandatory. This form is being used to avoid wordiness and monotony but means the same as if the word "shall" had been included.

(d) The provisions in the minimum guidelines and requirements are based upon adult dimensions and anthropometrics.

(e) Dimensions that are not marked "minimum" or "maximum" are absolute, unless otherwise indicated in the text or captions. All dimensions are subject to conventional building tolerances for field conditions.

§ 1190.7 Severability.

If any section, subsection, paragraph, sentence, clause, or phrase of these guidelines and requirements is declared invalid for any reason, the remaining portions of these guidelines and requirements that are severable from the invalid part shall remain in full force and effect. If a part of these guidelines and requirements is invalid in one or more of its applications, the part shall remain in effect in all valid applications that are severable from the invalid applications.

[47 FR 33864, Aug. 4, 1982. Redesignated at 54 FR 5444, Feb. 3, 1989]

Subpart B—Scope

SOURCE: 47 FR 33864, Aug. 4, 1982. Redesignated at 54 FR 5444, Feb. 3, 1989, unless otherwise noted.

§ 1190.30 Scope. [Reserved]

§ 1190.31 Accessible buildings and facilities: New construction.

Except as otherwise provided in this part, all new construction of buildings and facilities shall comply with the minimum requirements set forth below. The citations beginning with "ANSI" in the provisions which follow refer to the sections of the American National Standard, ANSI A117.1-1986, "Providing Accessibility and Usability for Physically Handicapped People" by the American National Standards Institute, Inc. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the American National Standards Institute, Inc., 1430 Broadway, New York, N.Y. 10018. Copies may be inspected at the office of the U.S. Architectural and Transportation Barriers Compliance Board, 1111 18th Street, NW., Suite 501, Washington, DC or at the Office of the Federal Register, 1100 L Street, NW., Room 8301, Washington, DC.

(a) Accessible route. At least one accessible route shall comply with ANSI A117.1-1986, section 4.3, Accessible Routes (Incorporated by reference, see § 1190.31(a).)

(1) Required accessible route(s) shall connect an accessible building entrance with:

(i) Transportation facilities located within the property line of a given site, including passenger loading zones, public transportation facilities, taxi stands, and parking;

(ii) Public streets and sidewalks;

(iii) Other accessible buildings, facilities, elements, and spaces that are on the same site; and

(iv) All accessible spaces, rooms, and elements within the building or facility.

(2) Where fire code provisions require more than one means of egress from any space or room, then more than one accessible means of egress complying with ANSI A117.1-1986, section 4.3.10 shall be provided for handicapped people and shall be arranged so as to be readily accessible from all accessible rooms and spaces (Incorporated by reference, see § 1190.31(a).)

(b) *Parking and passenger loading zones.*

(1) If any parking is provided, for employees or visitors, or both, each such parking area shall comply with ANSI A117.1-1986 section 4.6 Parking Spaces and Passenger Loading Zones (Incorporated by reference, see § 1190.31(a)), and the following table:

Total parking in lot	Required minimum number of accessible spaces
1 to 25	1.
26 to 50	2.
51 to 75	3.
76 to 100	4.
101 to 150	5.
151 to 200	6.
201 to 300	7.
301 to 400	8.
401 to 500	9.
501 to 1,000	2 pct of total.
Over 1,000	20 plus 1 for each 100 over 1,000

Passenger loading zones shall provide an access aisle at least 60 in (1525 mm) wide and 20 ft (60 mm) long adjacent and parallel to the vehicle pull-up space. If there are curbs between the access aisle and the vehicle pull-up space, then a curb ramp complying with ANSI A117.1-1986, section 4.7 shall be provided. A minimum vertical clearance of 114 in (3.45 m) shall be provided at accessible passenger loading zones and along vehicle access routes to such areas from site entrances.

(i) *Exception:* The total number of accessible parking spaces may be distributed among parking lots, if greater accessibility is achieved.

(ii) *Exception:* This paragraph does not apply to parking provided for official government vehicles owned or leased by the government and used exclusively for government purposes.

Parking spaces for side lift vans are accessible parking spaces and may be used to meet the requirements of this paragraph.

(2) If passenger loading zones are provided, at least one passenger loading zone shall comply with ANSI A117.1-1986 section 4.6 Parking Spaces and Passenger Loading Zones (Incorporated by reference, see § 1190.31(a)).

(c) *Ramps and curb ramps.* If there is an abrupt level or grade change, if the slope is greater than 1:20, and if no other means of accessible vertical access is provided, a ramp or curb ramp shall be provided. If a ramp or curb ramp is provided, it shall comply with ANSI A117.1-1986, section 4.7 Curb Ramps or 4.8 Ramps, as appropriate (Incorporated by reference, see § 1190.31(a).).

(d) *Stairs.* Except as provided in § 1190.31(f)(1), stairs connecting levels that are not connected by an elevator shall comply with ANSI A117.1-1986, section 4.9, Stairs. (Incorporated by reference, see § 1190.31(a).)

(e) *Handrails.* Handrails shall be provided at each ramp and staircase as required in ANSI A117.1-1986, sections 4.8 Ramps and 4.9 Stairs, respectively. (Incorporated by reference, see § 1190.31(a).)

(f) *Elevators.* One passenger elevator complying with ANSI A117.1-1986, section 4.10, Elevators (incorporated by reference, see § 1190.31(a)) shall serve each level in all multi-story buildings and facilities. If more than one elevator is provided, each elevator shall comply with ANSI A117.1-1986, section 4.10, Elevators (incorporated by reference, see § 1190.31(a)). All elevator control buttons shall be at least ¾ in (19mm) in their smallest dimension. They shall be raised or flush.

(1) *Exception.* Elevator pits, elevator penthouses, mechanical rooms, piping,

or equipment catwalks are excepted from this requirement.

(2) *Exception.* Ramps or platform lifts complying with ANSI A117.1-1986, section 4.8 Ramps and ANSI A117.1-1986, section 4.11 Platform Lifts (incorporated by reference, see § 1190.31(a)), respectively, may be used in lieu of an elevator.

(g) *Platform lifts.* If the slope is greater than 1:20, and if no other means of accessible vertical access is provided, a platform lift may be provided if there is an abrupt level or grade change. If a platform lift is provided, it shall comply with ANSI A117.1-1986, section 4.11 Platform Lifts (incorporation by reference, see § 1190.31(a)), and should facilitate unassisted entry and exit from the lift.

(h) *Entrances.* At least one principal entrance at each grade floor level to a building or facility shall comply with ANSI A117.1-1986, section 4.14, Entrances (incorporated by reference, see § 1190.31(a)). When a building or facility has entrances which normally serve any of the following functions: transportation facilities, passenger loading zones, accessible parking facilities, taxi stands, public streets and sidewalks, accessible interior vertical access, then at least one of the entrances serving each such function shall comply with ANSI A117.1-1986, section 4.14, Entrances (incorporated by reference, see § 1190.31(a)). Because entrances also serve as exits, particularly in cases of emergency, the proximity of such accessible entrances and exits to all parts of the building is essential. It is preferable that all or most entrances and exits be accessible. One entrance may serve more than one function.

(i) *Doors.* (1) At each accessible entrance to a building or facility, at least one door shall comply with ANSI A117.1-1986, section 4.13, Doors (incorporated by reference, see § 1190.31(a)).

(2) Within a building or facility, at least one door at each accessible entrance to the accessible space shall comply with ANSI A117.1-1986, section 4.13, Doors (incorporated by reference, see § 1190.31(a)).

(3) Each door required by ANSI A117.1-1986, section 4.3.10, Egress (incorporated by reference, see § 1190.31(a)), shall comply with ANSI A117.1-1986, section 4.13, Doors (incorporated by reference, see § 1190.31(a)).

(4) Each door that is an element of an accessible route shall comply with ANSI A117.1-1986, section 4.13, Doors (incorporated by reference, see § 1190.31(a)).

(j) *Windows.* If operable windows are provided, they shall comply with ANSI A117.1-1986, section 4.12 Windows. (Incorporated by reference, see § 1190.31(a).)"

(k) *Toilet and bathing facilities.* If toilet and bathing facilities are provided, then each public and common use toilet room shall comply with ANSI A117.1-1986, section 4.22, Toilet Rooms, Bathrooms, Bathing Facilities and Shower Rooms (incorporated by reference, see paragraph (a) of this section. Other toilet rooms shall be adaptable. If bathing facilities are provided, then each public and common use bathing facility shall comply with ANSI A117.1-1986, section 4.22. In each such facility where any of the fixtures and accessories specified in ANSI A117.1-1986, section 4.16, Water Closets; ANSI A117.1-1986, section 4.17, Toilet Stalls; ANSI A117.1-1986, section 4.18, Urinals; ANSI A117.1-1986, section 4.19, Lavatories, Sinks and Mirrors; ANSI A117.1-1986, section 4.20, Bathtubs; and ANSI A117.1-1986, section 4.21, Shower Stalls, are provided, at least one accessible fixture and accessory of each type provided shall comply with the provisions in the subsection applicable to that fixture or accessory. The size and arrangement of toilet stalls shall comply with ANSI Fig. 30(a). Toilet stalls with a minimum depth of 56 in (1420 mm) (see ANSI Fig. 30(a)) shall have wall-mounted closets. If the depth of toilet stalls is increased at least 3 in (75 mm), then a floor mounted water closet may be used. Arrangements shown for toilet stalls may be reversed to allow either a left-hand or right-hand approach. Installation of a fixed shower head may be permitted in lieu of an adjustable height or hand-held shower head in unmonitored facilities where vandalism is a concern. Curbs in shower stalls that are 36 in by 36 in (915 mm by 915 mm) shall have a maximum height of ½ in (13 mm). Bathrooms in dwelling units required to be accessible shall comply with ANSI A117.1-1986, section 4.32.4, Bathrooms. For special use situations, refer to Subpart E, Special Building or Facility Types or Elements.

(l) *Drinking fountains and water coolers.* If drinking fountains or water coolers are provided, approximately 50% of those provided on each floor shall comply with ANSI A117.1-1986, section 4.15, Drinking Fountains and Water Coolers, (incorporated by reference, see § 1190.31(a)), and shall be dispersed throughout the floor. If only one drinking fountain or water cooler is provided on any floor, it shall comply with ANSI A117.1-1986, section 4.15. It is preferred that if only one drinking fountain or water cooler is provided on any floor, then it should have two levels with the lower level complying with ANSI A117.1-1986, section 4.15.

(m) *Controls and operating mechanisms.* If controls and operating mechanisms are provided in accessible spaces, along accessible routes or as parts of accessible elements, each shall comply with ANSI A117.1-1986, section 4.25, Controls and Operating Mechanisms. (Incorporated by reference, see § 1190.31(a).)

(n) *Alarms.* If alarm systems are provided, each shall comply with ANSI A117.1-1986, section 4.26, Alarms (incorporated by reference, see § 1190.31(a)). In facilities with sleeping accommodations, the sleeping accommodations required to be accessible shall have an alarm system complying with ANSI A117.1-1986, section 4.26.4, Auxiliary Alarms. Emergency warning systems in health care facilities may be modified to suit standard health care alarm design practice.

(o) *Detectable warnings.* Detectable warnings complying with ANSI A117.1-1986, section 4.27.3, Tactile Warnings on Doors to Hazardous Areas (incorporated by reference, see § 1190.31(a)), shall be provided on the hardware of all doors leading to hazardous areas. Such warnings shall not be used at emergency exit doors. Detectable warnings are not required at locations other than doors to hazardous areas by this part. If detectable warnings are provided, the specifications at ANSI A117.1-1986, section 4.27 may be used as guidance. Note—The ATBCB has funded research in the area of detectable tactile surface treatments. The research findings were inconclusive and, therefore, recommended no mandatory requirements at this time. Further information is being developed through additional research on detectable materials and fact-finding on current applications, particularly on transit platforms. Technical assistance materials including information about additional detectable cues (sound and resiliency) not discussed in ANSI are available from the ATBCB, 1111 18th Street, NW, Suite 501, Washington, DC 20036, (202) 653-7834 (voice or TDD).

(p) *Signage.* Signage shall comply with ANSI A117.1-1986, section 4.28, Signage (incorporated by reference, see § 1190.31(a)). Permanent signage that identifies rooms and spaces shall also comply with ANSI A117.1-1986, section 4.28.4. Exception: The provisions of ANSI A117.1-1986, section 4.28.4 are not mandatory for temporary information on room and space signage, such as current occupant's name, provided the permanent room or space identification complies with ANSI A117.1-1986, section 4.28.4.

(q) *Telephones.* (1) If public telephones are provided, then accessible public telephones shall comply with ANSI A117.1-1986, section 4.29, Telephones (incorporated by reference, see § 1190.31(a)), and the following table:

Number of public telephones provided on each floor	Number of telephones required to be accessible [1]
One or more single unit installations.	One per floor.
One bank [2]	One per floor.
Two or more banks [2]	One per bank. Accessible unit may be installed as a single unit in proximity (either visible or with signage) to bank. At least one public telephone per floor shall meet the requirements for a forward reach telephone.[3]

[1] Additional public telephones may be installed at any height; however, the installation of accessible telephones is strongly recommended. Unless otherwise specified, accessible telephones may be either forward reach or side reach telephones.

[2] A bank consists of two or more adjacent public telephones usually installed as a unit.

[3] Exception for exterior installations only. If dial-tone-first service is *not* available, then a side reach telephone may be installed instead of the required forward reach telephone (*i.e.*, one telephone in proximity to each bank shall meet the requirements of ANSI A117.1-1986, section 4.29, Telephones (incorporated by reference, see § 1190.31(a))).

(2) At least one of the public telephones complying with ANSI A117.1-1986, section 4.29, Telephones (incorporated by reference, see § 1190.31(a)), shall be equipped with a volume control. The installation of additional volume controls is encouraged and these may be installed on any public telephone provided.

(3) Signage. [Reserved]

(r) *Seating, tables, and work surfaces.* If fixed seating, tables, and work surfaces are provided, at least 5 percent but always at least one of each element shall comply with ANSI A117.1-1986, section 4.30, Seating, Tables and Work Surfaces. (Incorporated by reference, see § 1190.31(a).)

(s) *Assembly areas, conference, or meeting rooms.* (1) If assembly areas are provided, accessible viewing positions shall comply with ANSI A117.1-1986, section 4.31, Auditorium and Assembly Areas (incorporated by reference, see 1190.31(a)), and the following table:

Capacity of assembly area	Number of viewing positions
50 to 75	3.
76 to 100	4.
101 to 150	5.
151 to 200	6.
201 to 300	7.
301 to 400	8.
401 to 500	9.
501 to 1,000	2 pct of total.
Over 1,000	20 plus 1 for each 100 over 1,000.

Accessible viewing positions may be clustered in bleachers, balconies, and other areas that have sight lines requiring slopes greater than 5 percent or to permit equivalent accessible viewing positions to be located on levels having accessible egress.

(2) Assembly areas with audio-amplification systems shall have a listening system complying with ANSI A117.1-1986, section 4.31, to assist a reasonable number of people but no fewer than two, with severe hearing loss. For assembly areas without amplification systems and for spaces used primarily as meeting and conference rooms, a permanently installed or portable listening system shall be provided. This requirement may be satisfied by use of a portable system that requires little or no installation. If portable systems are used for conference and meeting rooms, the system may serve more than one room.

(3) If performing areas are provided, accessible routes shall comply with ANSI A117.1-1986, section 4.3, Accessible Routes, to performing areas, including but not limited to stages, arena floors, dressing rooms, locker rooms, and other rooms and spaces required for use of the assembly area. (ANSI 4.33.5)

(i) *Exception.* In alteration work where it is structurally impracticable to alter all performing areas to be on an accessible route, at least one of each type shall be made accessible. (ANSI 4.33.6* and 4.33.7*)

(ii) [Reserved]

(t) *Storage.* If storage facilities such as cabinets, shelves, closets and drawers are provided in accessible spaces for occupant use, at least one storage facility of each type provided shall comply with ANSI A117.1-1986, section 4.23, Storage. (Incorporated by reference, see § 1190.31(a).) Additional storage may be provided outside of the dimensions provided in ANSI A117.1-1986, section 4.23, Storage. (Incorporated by reference, see § 1190.31(a).)

(u) *Housing.* Accessible housing shall:

(1) Comply with the requirements of this section as it applies to public use and common use areas and areas where handicapped persons may be employed, except as follows:

(i) Elevators: Where provided, elevators shall comply with ANSI A117.1-1986, section 4.10 (incorporated by reference, see 1190.31(a)). All elevator control buttons shall be at least ¾ in (19 mm) in their smallest dimension. They shall be raised or flush. Elevators or other accessible means of vertical movement are not required in residential facilities when:

(A) No accessible dwelling units are located above or below the accessible grade level; and

(B) At least one of each type of common area and amenity provided for use of residents and visitors is available at the accessible grade level.

(ii) Entrances: Entrances complying with ANSI 4.14 shall be provided as necessary to achieve access to and egress from buildings and facilities. EXCEPTION: In projects consisting of one-to-four family dwellings where accessible entrances would be extraordinarily costly due to site conditions or local code restrictions, accessible entrances are required only to those buildings containing accessible dwelling units.

(iii) Common Areas: At least one of each type of common area and amenity in each project shall be accessible and shall be located on an accessible route to any accessible dwelling unit.

(2) Provide dwelling units or sleeping accommodations complying with ANSI 4.32, Dwelling Units, in accordance with the following table:

Facilities	Application
Hotels, motels, boarding houses	5 percent of the total units, or at least one, whichever is greater.
Multifamily housing (including apartment houses) Federally assisted	5 percent of the total, or at least one unit, whichever is greater in multifamily housing projects.
Federally owned	5 percent of the total, or at least one unit, whichever is greater in multifamily housing projects.
Dormitories	5 percent of the total, or at least one unit whichever is greater.
One and two family dwelling Federally assisted, rental	5 percent of the total, or at least one unit, whichever is greater, in multifamily housing projects.
Federally assisted homeownership	To be determined by home buyer.
Federally owned	5 percent of the total, or at least one unit, whichever is greater in multifamily housing projects.

(v) *Health care facilities.* Accessible health care facilities shall:

(1) Comply with the requirements of this § 1190.31 as it applies to public use and common use areas and areas where handicapped persons may be employed; and

(2) Provide patient rooms and patient toilet rooms complying with Part 6 of UFAS in accordance with the following table:

Facilities	Application
Long term care facilities (including skilled nursing facilities, intermediate care facilities, bed and care, and nursing homes)	At least 50 percent of patient toilets and bedrooms.
Outpatient facilities	All patient toilets and bedrooms.
Hospital: General purpose hospital	At least 10 percent of patient toilets and bedrooms.
Special purpose hospital (hospitals that treat conditions that affect mobility)	All patient toilets and bedrooms.

[47 FR 33864, Aug. 4, 1982, as amended at 54 FR 5444, Feb. 3, 1989; 54 FR 34977, Aug. 23, 1989]

§ 1190.32 Accessible buildings and facilities: Additions.

Each addition to an existing building or facility shall comply with § 1190.31, New construction, except as follows:

(a) *Entrances.* If a new addition to a building or facility does not have an entrance, then at least one entrance in the existing building or facility shall comply with ANSI A117.1-1986, section 4.14, Entrances. (The citations beginning with "ANSI" in this section refer to the sections of the American National Standard, ANSI A117.1-1986, "Providing Accessibility and Usability for Physically Handicapped People" by the American National Standards Institute, Inc. which has been approved for incorporation by reference as set forth in § 1190.31(a).

(b) *Accessible route.* If the only accessible entrance to the addition is located in the existing building or facility, then at least one accessible route shall comply with ANSI A117.1-1986, section 4.3, Accessible Route (incorporated by reference, see § 1190.31(a)), and shall provide access through the existing building or facility to all rooms, elements, and spaces in the new addition.

(c) *Toilet and bathing facilities.* If there are no toilet rooms and bathing facilities in the addition and these facilities are provided in the existing building, then at least one toilet and bathing facility in the existing building shall comply with ANSI A117.1-1986, section 4.22, Toilet Rooms, Bathrooms, Bathing Facilities and Shower

Rooms. (Incorporated by reference, see § 1190.31(a).).

(d) *Elements, spaces, and common areas.* If elements, spaces, or common areas are located in the existing building and they are not provided in the addition, consideration should be given to making those elements, spaces, and common areas accessible in the existing building.

(e) *Exception:* Mechanical rooms, storage areas, and other such minor additions which normally are not frequented by the public or employees of the facility are excepted from § 1190.32, (a), (b), (c) and (d).

[47 FR 33864, Aug. 4, 1982, as amended at 54 FR 5446, Feb. 3, 1989]

§ 1190.33 Accessible buildings and facilities: Alterations.

(a) *General.* Alterations to existing buildings or facilities shall comply with the following:

(1) If existing elements, spaces, essential features, or common areas are altered, then each such altered element, space, feature, or area shall comply with the applicable provisions of § 1190.31, Accessible buildings and facilities: New construction, except as noted in paragraph (a)(2) of this section.

(2) Exceptions to the requirements for (a)(1) of this section for existing buildings or facilities are:

(i) *Stairs.* Full extension of stair handrails shall not be required in alterations where such extensions would be hazardous or impossible due to plan configuration.

(ii) *Elevators.* (A) If a safety door edge is provided in existing automatic elevators, then the automatic door reopening devices may be omitted (see ANSI A117.1-1986 section 4.10.6). (The citations beginning with "ANSI" in this section refer to the sections of the American National Standard, ANSI A117.1-1986, "Providing Accessibility and Usability for Physically Handicapped People" by the American National Standards Institute, Inc. which has been approved for incorporation by reference as set forth in § 1190.31(a).

(B) Where existing shaft or structural elements prohibit strict compliance with ANSI A117.1-1986, section 4.10.9 (incorporated by reference, see § 1190.31(a)), then the minimum floor area dimensions may be reduced by the minimum amount necessary, but in no case shall they be less than 48 in by 48 in (1220 mm by 1220 mm).

(iii) *Doors.* (A) Where existing elements prohibit strict compliance with the clearance requirements of ANSI 4.13.5, a projection of 5/8 in (16 mm) maximum will be permitted for the latch side door stop. (The citations beginning with "ANSI" in this section refer to the sections of the American National Standard, ANSI A117.1-1986, "Providing Accessibility and Usability for Physically Handicapped People" by the American National Standards Institute, Inc. which has been approved for incorporation by reference as set forth in § 1190.31(a).)

(B) If existing thresholds measure ¾ in (19 mm) high or less, and are beveled or modified to provide a beveled edge on each side, then they may be retained.

(iv) *Toilet rooms.* Where alterations to existing facilities make strict compliance with ANSI A117.1-1986, sections 4.22 and 4.23 (incorporated by reference, see § 1190.31(a)) structurally impracticable, the addition of one "unisex" toilet per floor containing one water closet complying with ANSI A117.1-1986, section 4.16 and one lavatory complying with ANSI A117.1-1986, section 4.19, located adjacent to existing toilet facilities, will be acceptable in lieu of making existing toilet facilities for each sex accessible.

(v) *Assembly areas.* (A) In alterations where it is structurally impracticable to disperse seating throughout the assembly area, seating may be located in collected areas as structurally feasible. Seating shall adjoin an accessible route that also serves as a means of emergency egress.

(B) In alterations where it is structurally impracticable to alter all performing areas to be on an accessible route, then at least one of each type shall be made accessible.

(3) If power-driven vertical access equipment (*e.g.*, escalator) is planned or installed where none existed previously, or if new stairs (other than stairs installed to meet emergency exit requirements) requiring major struc-

tural changes are planned or installed where none existed previously, then a means of accessible vertical access shall be provided that complies with ANSI A117.1-1986, section 4.8, Ramps; ANSI A117.1-1986, section 4.10, Elevators; or ANSI A117.1-1986, section 4.11, Platform Lifts (incorporated by reference, see § 1190.31(a)) except to the extent where it is structurally impracticable in transit facilities. All elevator control buttons shall be at least ¾ in (19 mm) in their smallest dimension. They shall be raised or flush.

(4) If alterations of single elements, when considered together, amount to an alteration of a space of a building or facility, the entire space shall be made accessible.

(b) Where a building or facility is vacated and it is totally altered, then it shall comply with § 1190.31 Accessible buildings and facilities: New construction, except to the extent where it is structurally impracticable.

(c) Where substantial alteration occurs to a building or facility, then each element or space that is altered or added shall comply with the applicable provisions of § 1190.31, Accessible buildings and facilities: New construction, except to the extent where it is structurally impracticable and the altered building or facility shall contain:

(1) At least one accessible route complying with ANSI A117.1-1986, section 4.3, Accessible Routes (incorporated by reference, see § 1190.31(a)), and § 1190.33(a);

(2) At least one accessible entrance complying with ANSI A117.1-1986, section 4.14, Entrances (incorporated by reference, see § 1190.31(a).). If additional accessible entrances are altered, then they shall comply with § 1190.33(a)(1); and

(3) The following toilet facilities, whichever number is greater:

(i) At least one toilet facility for each sex in the altered building complying with ANSI A117.1-1986, section 4.22, Toilet Rooms, Bathrooms, Bathing Facilities, and Shower Rooms (incorporated by reference, see § 1190.31(a));

(ii) At least one toilet facility for each sex on each substantially altered floor, where such facilities are provided, complying with ANSI A117.1-1986, section 4.22, Toilet Rooms, Bathrooms, Bathing Facilities, and Shower Rooms (incorporated by reference, see § 1190.31(a));

In making the determination as to what constitutes "substantial alteration," the agency issuing standards for the facility shall consider the total cost of all alterations (including but not limited to electrical, mechanical, plumbing, and structural changes) for a building or facility within any twelve (12) month period. For guidance in implementing this provision, an alteration to any building or facility is to be considered substantial if the total cost for this twelve month period amounts to 50% or more of the full and fair cash value of the building as defined at § 1190.3.

(4) *Exception.* If the cost of the elements and spaces required by § 1190.33(c) (1), (2), and (3) exceeds 15% of the total cost of all other alterations, then a schedule may be established by the standard-setting and/or funding agency to provide the required improvements within a 5 year period.

(5) *Exception.* If the alteration is limited solely to the electrical, mechanical, or plumbing system and does not involve the alteration of any elements and spaces required to be accessible under Part 1190, then § 1190.33(c) does not apply.

(6) *Exception.* Consideration shall be given to providing accessible elements and spaces in each altered building or facility complying with:

(i) ANSI A117.1-1986, sections 4.6, Parking Spaces and Passenger Loading Zones, as modified by § 1190.31(s)(1);

(ii) ANSI A117.1-1986, section 4.15, Drinking Fountains and Water Coolers;

(iii) ANSI A117.1-1986, section 4.23, Storage;

(iv) ANSI A117.1-1986, section 4.26, Alarms;

(v) ANSI A117.1-1986, section 4.29, Telephones;

(vi) ANSI A117.1-1986, section 4.30, Seating, Tables and Work Surfaces;

(vii) ANSI 4.31, Auditorium and Assembly Areas, as modified by

§ 1190.31(s)(1). (Incorporated by reference, see § 1190.31(a).)

(7) *Exception:* Mechanical rooms and other spaces which normally are not frequented by the public or employees of the facility or which by nature of their use are not required by the Architectural Barriers Act to be accessible are excepted from § 1190.33(c) (1), (2), and (3).

[47 FR 33864, Aug. 4, 1982, as amended at 54 FR 5446, Feb. 3, 1989]

§ 1190.34 Accessible buildings and facilities: Leased.

(a) Buildings or facilities or portions thereof leased by the Federal Government shall comply with § 1190.31, New construction, or shall incorporate the features listed in § 1190.33(c), Alterations. Where both types of buildings are available for leasing, reasonable preference must be given to buildings or facilities complying with § 1190.31, New construction.

(b) If space complying with paragraph (a) of this section is not available, space may be leased only if the space meets, or is altered to meet, the following conditions:

(1) At least one accessible route is provided from an accessible entrance complying with § 1190.120, Entrances, to those areas in which the principal activities for which the building or facility was leased are conducted. Separate accessible routes may be provided to areas serving different groups of users (e.g., the public, employees).

(2) The accessible route shall comply with the requirements of § 1190.50, Walks, floors, and accessible routes, and provide access to whatever accessible facilities are either required or provided, such as accessible toilets.

(i) Toilet facilities, to the extent required for the ready intended use of the building or facility, shall be provided as follows—

(A) Where more than one toilet for each sex is provided in a building or facility, at least one toilet facility which complies with § 1190.150, Toilet and bathing facilities, shall be provided for each sex on each floor having toilets; or

(B) In a building or facility providing only one toilet for each sex, either one unisex toilet or one toilet for each sex complying with § 1190.150 shall be provided; or

(C) In a building or facility where only one toilet is provided, one unisex toilet complying with § 1190.150 shall be provided.

(ii) Parking facilities, if a parking area is included within the lease, shall be provided complying with § 1190.60, Parking and passenger loading zones, to the extent feasible.

(3) Where an agency determines that an area does not require the provision of toilets or parking facilities for the users or occupants of that area, nothing in this section shall be construed to require the provision of any such facilities.

(4) Consideration shall be given to providing accessible elements and spaces in each altered building or facility complying with:

(i) Section 1190.160 Drinking fountains and water coolers;

(ii) Section 1190.180 Alarms;

(iii) Section 1190.210 Telephones;

(iv) Section 1190.220 Seating, tables, and work surfaces;

(v) Section 1190.230 Assembly areas; and

(vi) Section 1190.240 Storage.

(c) If space leased in accordance with the requirements of paragraph (a) or (b) of this section is subsequently altered, then the alterations shall comply with the requirements of § 1190.33, Alterations.

(d) If space leased in accordance with the requirements of paragraph (a) or (b) of this section is increased by construction of an addition, the addition shall comply with § 1190.32, Additions, to the extent it is leased by the Federal Government.

(e) If leased space at the time of leasing meets past or present state or local codes or the recommended standards of the American National Standards Institute (ANSI) A117.1 for accessibility to physically handicapped people, and provides the features required by this section, the space may be used as is or altered to comply with the technical requirements of paragraph (a) or (b) of this section.

(f) Once leased space in an existing building is accessible or is made accessible hereunder, no new accessibility alterations shall be required under this subpart except where alterations or additions are made to the building which are covered by paragraphs (c) and (d) of this section.

(g) *Exceptions.* (1) If no space complying with paragraph (a) or (b) of this section is available for leasing, space as available may be leased without alterations:

(i) If the lease is necessary for officials servicing natural or human-made disasters on an emergency basis;

(ii) If the space is used on an intermittent basis; or

(iii) If the occupancy of the space is for no more than twelve months. If delays occur during the twelve months, the short-term lease may be extended for no more than an additional 12 months.

(2) Mechanical rooms and other spaces which normally are not frequented by the public or employees with handicaps of the occupant agency or which by nature of their use are not required to be accessible are excepted from this section.

[53 FR 35510, Sept. 14, 1988]

NOTE: The Minimum Guidelines and Requirements for Accessible Design require that all buildings and facilities covered by the Architectural Barriers Act are subject to this part. As published on January 16, 1981, the guidelines and requirements specifically provided that all buildings and facilities leased by the Federal Government must be accessible at the time the building or facility is leased. In view of the continuing controversy over the point at which the Architectural Barriers Act applies to leased buildings and facilities, this part no longer specifies at which point the accessibility standard must apply to leased buildings and facilities. This change has been made solely in recognition of the fact that the issue concerning the applicability of the Architectural Barriers Act to certain leased buildings is a legal one on which the Board expresses no position.

Subpart C—Technical Provisions

§ 1190.40 Technical specifications.

Features, elements and spaces required to be accessible by § 1190.31, § 1190.32, or § 1190.33 shall meet the technical requirements specified in the provisions of sections 4.2 through 4.32 of ANSI A117.1-1986, "American National Standard for Buildings and Facilities—Providing Accessibility and Usability for Physically Handicapped People," which is incorporated herein by reference, except as noted herein. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018. Copies may be inspected at the office of the U.S. Architectural and Transportation Barriers Compliance Board, 1111 18th Street, NW., Suite 501, Washington, DC or at the Office of the Federal Register, 1100 L Street, NW., Room 8301, Washington, DC.

[54 FR 5447, Feb. 3, 1989]

§ 1190.50 Exceptions.

(a) In addition to ANSI A117.1-1986, section 4.10 (incorporated by reference, see § 1190.31(a)), Elevators, the following requirement is added: Hall call buttons provided under ANSI A117.1-1986, section 4.10.3 shall be raised or flush.

(b) Under ANSI A117.1-1986, section 4.7 (incorporated by reference, see § 1190.31(a)), Curb Ramps, and ANSI 117.1-1986, section 4.7.7, Warning Textures, and ANSI 117.1-1986, section 4.7.12, Uncurbed Intersections, shall not apply.

(c) In addition to ANSI A117.1-1986, section 4.28, Signage (incorporated by reference, see § 1190.31(a)) , there is added the requirement that interior tactile signage identifying rooms and spaces be located alongside the door on the latch side and be mounted at a height between 54 in and 66 in (1370 mm and 1675 mm) above the finished floor.

[54 FR 5447, Feb. 3, 1989]

Subpart D—Special Building or Facility Types or Elements

§ 1190.60 Special building or facility types.

The requirements specified in the Uniform Federal Accessibility Standards (UFAS) in sections 5, Restaurants and Cafeterias; 6, Health Care; 7, Mercantile; 8, Libraries; and 9, Postal Facilities, are deemed to satisfy minimum guidelines and requirements of the ATBCB for accessibility standards for those building and facility types.

[54 FR 5448, Feb. 3, 1989]

CHAPTER XII—NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

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SUBCHAPTER A—GENERAL RULES

PART 1200—OFFICIAL SEALS

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AUTHORITY: 44 U.S.C. 2104(e), 2116(b), 2302.

SOURCE: 50 FR 27196, July 1, 1985, unless otherwise noted.

§ 1200.1 Definitions.

For the purposes of this part—

Embossing seal means a display of the form and content of the official seal made on a die so that the seal can be embossed on paper or other medium.

NARA means all organizational units of the National Archives and Records Administration.

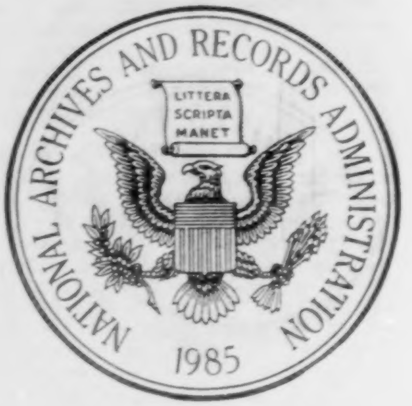
Official seal means the original(s) of the seal showing the exact form, content and color.

Replica or *reproduction* means a copy of the official seal displaying the form, content and color.

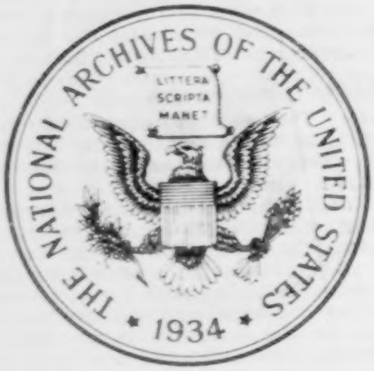
§ 1200.2 Description and design.

(a) *National Archives and Records Administration seal.* The design is illustrated below and described as follows:

Centered on a disc with a double-line border a solid line rendition of an heraldic eagle displayed holding in its left talon thirteen arrows, in its right talon a branch of olive, bearing on its breast a representation of the shield of the United States and displayed above its head a partially unrolled scroll inscribed with the words LITTERA SCRIPTA MANET one above the other; all within the circumscription NATIONAL ARCHIVES AND RECORDS ADMINISTRATION, with the date 1985 at bottom center.

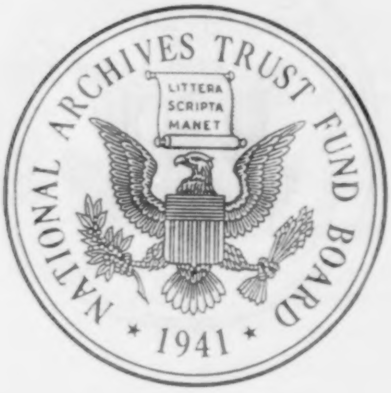


(b) *National Archives seal.* The design is illustrated below and described as in paragraph (a) of this section, encircled by the circumscription THE NATIONAL ARCHIVES OF THE UNITED STATES, with the date 1934 at the bottom center.



(c) *National Archives Trust Fund Board seal.* The design is illustrated below and described as in paragraph

(a) of this section, encircled by the circumscription NATIONAL ARCHIVES TRUST FUND BOARD, with the date 1941 at the bottom center.


NATIONAL ARCHIVES TRUST FUND BOARD
LITTERA SCRIPTA MANET
1941

§ 1200.4 Authority to affix seals.

The Archivist of the United States and the Archivist's designees are authorized to affix the official seals, embossing seals, replicas and reproductions to appropriate documents, certifications and other material for all purposes authorized by this part.

§ 1200.6 Use of the seals.

(a) The seals are the official emblems of NARA and their use is therefore permitted only as provided in this part.

(b) Use by any person or organization outside NARA may be made only with prior written approval by NARA.

(c) Requests by any person or organization outside NARA for permission to use the seals must be made in writing to the Archivist of the United States, National Archives (N), Washington, DC 20408, and must specify, in detail, the exact use to be made. Any permission granted applies only to the specific use for which it was granted and is not to be construed as permission for any other use.

(d) Use of the NARA and the National Archives of the United States seals shall be primarily for informational purposes and for authentication of documents. The National Archives Trust Fund Board seal shall be used only for Trust Fund documents and publications. The seals may not be used on any article or in any manner which may discredit the seals or reflect unfavorably upon NARA or which implies NARA endorsement of commercial products or services, or of the user's policies or activities.

(e) Falsely making, forging, counterfeiting, mutilating, or altering the official seals, replicas, reproductions or embossing seals, or knowingly using or possessing with fraudulent intent any altered seal is punishable under section 506 of title 18, United States Code.

(f) Any person using the official seals, replicas, reproductions, or embossing seals in a manner inconsistent with the provisions of this part is subject to the provisions of 18 U.S.C. 1017, which provides penalties for the wrongful use of an official seal, and to other provisions of law as applicable.

PART 1202—REGULATIONS IMPLEMENTING THE PRIVACY ACT OF 1974

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Subpart G—Assistance and Referrals

1202.100 Requests for assistance and referral.

AUTHORITY: 44 U.S.C. 2104(a); 5 U.S.C. 552a.

SOURCE: 50 FR 27197, July 1, 1985, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 1202 appear at 54 FR 32067, Aug. 4, 1989.

§ 1202.1 Scope of part.

This part sets forth policies and procedures concerning the collection, use, and dissemination of records maintained by NARA which are subject to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a. These policies and procedures govern only those records as defined in § 1202.4. Policies and procedures governing the disclosure and availability of NARA administrative records in general are in part 1250 of this chapter. This part also covers exemptions from disclosure of personal information; procedures for guidance of subject individuals in obtaining information and inspecting and disagreeing with the content of records; accounting for disclosures of information; special requirements for medical records; and fees.

§ 1202.2 Purpose.

This part implements the provisions of 5 U.S.C. 552a, popularly known as the "Privacy Act of 1974" (hereinafter referred to as the Act). This part prescribes procedures for notifying an individual of NARA systems of records which may contain a record pertaining to him or her, procedures for gaining access and contesting the contents of such records, and other procedures for carrying out the provisions of the Act.

§ 1202.4 Definitions.

For the purposes of this part 1202:

Access means a transfer of a record, a copy of a record, or the information in a record to the subject individual, or the review of a record by the subject individual.

Agency means agency as defined in 5 U.S.C. 552(e).

Disclosure means a transfer of a record, a copy of a record, or the information contained in a record to a recipient other than the subject individual, or the review of a record by someone other than the subject individual.

Individual means a citizen of the United States or an alien lawfully admitted for permanent residence.

Maintain includes maintain, collect, use, and disseminate.

NARA Privacy Act appeal official means the Deputy Archivist of the United States for appeals of denials of access to or amendment of records maintained in a system of records, except where the system manager is the Inspector General or the Archivist of the United States. The term means the Archivist of the United States for appeals of denial of access to or amendment of records in systems of records maintained by the Inspector General.

Record means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his or her education, financial transactions, medical history and criminal or employment history and that contains his or her name or an identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint, voiceprint, or photograph.

Routine use means, with respect to the disclosure of a record, the use of that record for a purpose which is compatible with the purpose for which it was collected.

Solicitation means a request by a NARA officer or employee that an individual provide information about himself or herself.

Statistical record means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by 13 U.S.C. 8.

Subject individual means the individual named or discussed in a record or the individual to whom a record otherwise pertains.

System manager means the NARA employee who is responsible for the maintenance of a system of records and for the collection, use, and dissemination of information therein.

System of records means a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifier assigned to that individual.

[50 FR 27197, July 1, 1985, as amended at 54 FR 32067, Aug. 4, 1989]

Subpart A—General Policy

§ 1202.10 Collection and use.

(a) *General.* Any information used in whole or in part in making a determination about an individual's rights, benefits, or privileges under NARA programs will be collected directly from the subject individual to the extent practicable. The system manager also shall ensure that information collected is used only in conformance with the provisions of the Act and these regulations.

(b) *Solicitation of information.* System managers shall ensure that at the time information is solicited the solicited individual is informed of the authority for collecting that information, whether providing the information is mandatory or voluntary, the purposes for which the information will be used, the routine uses of the information, and the effects on the individual, if any, of not providing the information. The Assistant Archivist for Management and Administration shall ensure that forms used to solicit information are in compliance with the Act and these regulations.

(c) *Solicitation of social security number.* Before a NARA employee requests an individual to disclose his or her social security number, the officer or employee shall ensure that either:

(1) The disclosure is required by Federal law, or;

(2) The disclosure was required under a Federal law or regulation adopted before January 1, 1975, to verify the identity of an individual, and the social security number will become a part of a system of records in existence and operating before January 1, 1975.

If solicitation of the social security number is authorized under paragraph (c) (1) or (2) of this section, the NARA employee who requests an individual to disclose his or her social security number shall first inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority the number is solicited, and the uses that will be made of it.

(d) *Soliciting information from third parties.* A NARA employee shall inform third parties who are requested to provide information about another individual of the purposes for which the information will be used.

§ 1202.12 Standards of accuracy.

The system manager shall ensure that all records which are used by NARA to make a determination about any individual are maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual.

§ 1202.14 Rules of conduct.

All NARA employees involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, shall review the provisions of 5 U.S.C. 552a and the regulations in this part, and shall conduct himself or herself in accordance with the rules of conduct concerning the protection of personal information in the NARA Standards of Conduct.

§ 1202.16 Safeguarding systems of records.

The system manager shall ensure that appropriate administrative, technical, and physical safeguards are established to ensure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained. Personnel information contained in both manual and automated systems of records shall be protected by implementing the following safeguards:

(a) Official personnel folders, authorized personnel operating or work folders, and other records of personnel actions effected during a NARA employee's Federal service or affecting the employee's status and service, including information on experience, education, training, special qualifications and skills, performance appraisals, and conduct, shall be stored in a lockable metal filing cabinet when not in use by an authorized person. A system manager may employ an alternative storage system providing that it furnishes an equivalent degree of physical security as storage in a lockable metal filing cabinet.

(b) System managers, at their discretion, may designate additional records of unusual sensitivity which require safeguards similar to those described in paragraph (a) of this section.

(c) System managers shall permit access to and use of automated or manual personnel records only to persons whose official duties require such access, or to subject individuals or their representatives as provided by this part.

§ 1202.18 Inconsistent issuances of NARA superseded.

Any policies and procedures in any NARA issuance which are inconsistent with the policies and procedures in this part are superseded to the extent of that inconsistency.

§ 1202.20 Records of other agencies.

(a) *Other agencies' records managed and administered by NARA.* Rules governing the maintenance of systems of records of agencies other than NARA which are located in the National Archives of the United States and Federal Records Centers are in Subchapter C of this chapter.

(b) *Current records of other agencies.* If NARA receives a request for access to records which are the primary responsibility of another agency, but which are maintained by or in the temporary possession of NARA on behalf of that agency, NARA shall refer the request to the agency concerned for appropriate action. NARA shall advise the requester that the request has been forwarded to the responsible agency. Records in the custody of NARA which are the primary responsibility of the U.S. Office of Personnel Management (OPM) are governed by the OPM rules promulgated pursuant to the Act.

§ 1202.22 Subpoenas and other legal demands.

Access to NARA systems of records by subpoena or other legal process shall be in accordance with the provisions of part 1250 of this chapter for administrative records and part 1254 of this chapter for accessioned records, FRC records, and donated historical materials.

Subpart B—Disclosure of Records

§ 1202.30 Conditions of disclosure.

No NARA employee may disclose any record to any person or to another agency without the express written consent of the subject individual unless the disclosure is:

(a) To NARA employees who have a need for the information in the official performance of their duties;

(b) Required by the provisions of the Freedom of Information Act;

(c) For a routine use as published in a notice in the FEDERAL REGISTER;

(d) To the Bureau of the Census for uses pursuant to Title 13, United States Code;

(e) To a recipient who has provided NARA with advance adequate written assurance that the record will be used solely as a statistical research or reporting record. The record shall be transferred in a form that is not individually identifiable. The written statement shall include as a minimum:

(1) A statement of the purpose for requesting the records; and

(2) Certification that the records will be used only for statistical purposes; these written statements shall be maintained as records. In addition to deleting personal identifying information from records released for statistical purposes, the system manager shall ensure that the identity of the individual cannot reasonably be deduced by combining various statistical records.);

(f) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government;

(g) To another agency or instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity, if the activity is authorized by law, and if the head of the agency or instrumentality or his or her other designated representative has made a written request to NARA specifying the particular portion desired and the law enforcement activity for which the record is sought;

(h) To a person showing compelling circumstances affecting the health or safety of an individual, not necessarily the individual to whom the record pertains (upon such disclosure, a notification must be sent to the last known address of the subject individual);

(i) To either House of Congress or to a subcommittee or committee (joint or of either House, to the extent that the subject matter falls within its jurisdiction);

(j) To the Comptroller General or any of his authorized representatives in the course of the performance of the duties of the General Accounting Office;

(k) To a consumer reporting agency in accordance with section 3711(f) of title 31; or

(l) Pursuant to the order of a court of competent jurisdiction.

§ 1202.32 Procedures for disclosure.

(a) Upon receipt of a request for disclosure, the system manager shall verify the right of the requester to obtain disclosure pursuant to § 1202.30. Upon verification, the system manager shall make the requested records available.

(b) If the system manager determines that the disclosure is not permitted under § 1202.30, he or she shall deny the request in writing and shall inform the requester of the right to submit a request for review and final determination to the Director, Legal Services Staff, National Archives (NSL), Washington DC 20408.

§ 1202.34 Accounting of disclosures.

(a) Except for disclosures made pursuant to § 1202.30 (a) and (b), an accurate accounting of each disclosure shall be made and retained for 5 years after the disclosure or for the life of the record, whichever is longer. The accounting shall include the date, nature, and purpose of each disclosure, and the name and address of the person or agency to whom the disclosure is made.

(b) The system manager also shall maintain in conjunction with the accounting of disclosures:

(1) A full statement of the justification for the disclosures;

(2) All documentation surrounding disclosure of a record for statistical or law enforcement purposes; and

(3) Evidence of written consent by the subject individual to a disclosure.

(c) Except for the accounting of disclosures made to agencies or instrumentalities in law enforcement activities in accordance with § 1202.30 or of disclosures made from exempt systems (see Subpart F of this part), the accounting of disclosures shall be made available to the individual upon request. Procedures for requesting access to the accounting are in Subpart C of this part.

Subpart C—Individual Access to Records

§ 1202.40 Forms of requests.

(a) Individuals seeking access to their records or to any information pertaining to themselves which is contained in a system of records should notify the system manager or applicable NARA official at the address indicated in the FEDERAL REGISTER notice describing the pertinent system of records.

(b) The request shall be in writing and shall bear the legend "Privacy Act Request" both on the request letter and on the envelope. The request letter shall contain:

(1) The complete name and identifying number of the NARA system as published in the FEDERAL REGISTER;

(2) The full name and address of the subject individual;

(3) A brief description of the nature, time, place, and circumstances of the individual's association with NARA; and

(4) Any other information which the individual believes would help the system manager to determine whether the information about the individual is included in the system of records.

The system manager or other NARA official shall answer or acknowledge the request within 10 workdays of its receipt by NARA.

(c) System managers at their discretion, may accept oral requests for access to a NARA system of records, subject to verification of identity.

§ 1202.42 Special requirements for medical records.

(a) A system manager who receives a request from an individual for access to those official medical records which belong to the Office of Personnel Management [illegible] are described in Chapter 339 of the Federal Personnel Manual (medical records which are otherwise filed in the Official Personnel Folder), shall refer the pertinent system of records to a Federal Medical Officer for review and determination in accordance with this section. If no Federal medical officer is available to make the determination required by this section, the system manager shall refer the request and the medical reports concerned to the Office of Personnel Management for a determination.

(b) If, in the opinion of a Federal Medical Officer, medical records requested by the subject individual indicate a condition about which a prudent physician would hesitate to inform a person suffering from such a condition of its exact nature and probable outcome, the system manager shall not release the medical information to the subject individual nor to any person other than a physician designated in writing by the subject individual, his or her guardian, or conservator.

(c) If, in the opinion of a Federal medical officer, the medical information does not indicate the presence of any condition which would cause a prudent physician to hesitate to inform a person suffering from such a condition of its exact nature and probable outcome, the system manager shall release the information to the subject individual or to any person, firm, or organization which the individual authorizes in writing to receive it.

§ 1202.44 Granting access.

(a) Upon receipt of a request for access to non-exempt records, the system manager shall make such records available to the subject individual or shall acknowledge the request within 10 workdays of its receipt by NARA. The acknowledgment shall indicate when the system manager will make the records available.

(b) If the system manager anticipates more than a 10-day delay in making a record available, he or she also shall include in the acknowledgment specific reasons for the delay.

(c) If a subject individual's request for access does not contain sufficient information to permit the system manager to locate the records, the system manager shall request additional information from the individual and shall have 10 workdays following receipt of the additional information in which to make the records available or to acknowledge receipt of the request and to indicate when the records will be available.

(d) Records will be made available for authorized access during normal business hours at the NARA offices where the records are located. Requesters should be prepared to identify themselves by signature (i.e., to sign the access log on the date of access and to produce other identification verifying the signature).

(e) Upon request, a system manager shall permit a subject individual to examine the original of a non-exempt record, shall provide the individual with a copy of the record, or both. Fees shall be charged only for copies requested by the individual and not for copies provided to the individual for the convenience of NARA.

(f) Subject individuals may request to pick up a record in person or to receive it by mail, directed to the name and address provided by the individuals in their request. A system manager shall not make a record available to a third party for delivery to the subject individual, except for medical records as outlined in § 1202.42.

(g) Subject individuals who wish to have a person of their choosing review, accompany them in reviewing, or obtain a copy of a record must, prior to the disclosure of their record, sign a statement authorizing the disclosure. The system manager shall maintain this statement with the record.

(h) The procedure for access to an accounting of disclosures is identical to the procedure for access to a record as set forth in this section.

§ 1202.46 Denials of access.

(a) A system manager may deny a subject individual access to his or her record only on the grounds that NARA has published rules in the Federal Register exempting the pertinent system of records from the access requirement. Exempt systems of records are described in Subpart F of this part.

(b) Upon receipt of a request for access to a record which the system manager believes is contained within an exempt system of records, he or she shall forward the request to the Assistant Archivist for Management and Administration. The system manager shall append to the request an explanation of the determination that the requested record is contained within an exempt system of records and a recommendation that the request be denied or granted.

(c) If the system manager is the Assistant Archivist for Management and Administration, that person shall retain the responsibility for denying or granting the request.

(d) If the system manager is the Inspector General, that person shall retain the responsibility for denying or granting the request.

(e) The Assistant Archivist for Management and Administration shall, in consultation with legal counsel and such other officials as deemed appropriate, determine if the requested record is in fact contained within an exempt system of records and:

(1) If the record is not contained within an exempt system of records, the Assistant Archivist for Management and Administration shall notify the system manager to grant the request in accordance with § 1202.44, or

(2) If the record is contained within an exempt system of records, the Assistant Archivist for Management and Administration shall:

(i) Notify the requester that the request is denied, including a statement justifying the denial and advising the requester of the right to judicial review of that decision as provided in § 1202.74; or

(ii) Notify the system manager to make the record available to the requester in accordance with § 1202.44, notwithstanding the inclusion of the record within an exempt system of records.

[50 FR 27197, July 1, 1985, as amended at 54 FR 32067, Aug. 4, 1989]

§ 1202.48 Appeal of denial of access within NARA.

(a) Requesters denied access in whole or part to records pertaining to them, exclusive of those records for which the system manager is the Archivist of the United States, may file with NARA an appeal of that denial.

(1) Appeals involving records for which the Inspector General is the system manager should be addressed to NARA Privacy Act Appeal Official (N), National Archives and Records Administration, Washington, DC 20408.

(2) All other appeals should be addressed to NARA Privacy Act Appeal Official (ND), National Archives and Records Administration, Washington, DC 20408.

(b) Each appeal to the NARA Privacy Act appeal official shall be in writing. The appeal should bear the legend "Privacy Act—Access Appeal," on both the face of the letter and the envelope.

(c) Upon receipt of an appeal, the NARA Privacy Act appeal official shall consult with the system manager, the official who made the denial, legal counsel, and such other officials as may be appropriate. If the NARA Privacy Act appeal official, in consultation with these officials, determines that the request for access should be granted because the subject records are not exempt, the NARA Privacy Act appeal official shall immediately either instruct the system manager in writing to grant access to the record in accordance with § 1202.44 or shall grant access and shall notify the requester of that action.

(d) If the NARA Privacy Act appeal official, in consultation with the officials specified in paragraph (c) of this section, determines that the appeal should be rejected, the NARA Privacy Act appeal official immediately shall notify the requester in writing of that determination. This action shall constitute NARA's final determination on the request for access to the record and shall include:

(1) The reason for the rejection of the appeal; and

(2) Notice of the requester's right to seek judicial review of NARA's final determination, as provided in § 1202.74.

(e) The final NARA determination will be made no later than 30 workdays from the date on which the appeal is received by the NARA Privacy Act appeal official. The NARA Privacy Act appeal official may extend this time limit by notifying the requester in writing before the expiration of the 30 workdays. The NARA Privacy Act appeal official's notification shall include an explanation of the reasons for the extension of time.

(f) Denial of access by the Archivist to records for which the Archivist is the system manager shall constitute the NARA final determination in such instances. Requesters shall be given notice of their right to seek judicial review of the determination, as provided in § 1202.74.

[50 FR 27197, July 1, 1985, as amended at 54 FR 32067, Aug. 4, 1989]

§ 1202.50 Records available at a fee.

The system manager shall provide one electrostatic copy of a record to a requester at a fee of $0.20 per page if NARA makes the copy or $0.10 per page if the requester makes the copy on a NARA self-service copier.

[53 FR 12150, Apr. 13, 1988]

§ 1202.52 Prepayment of fees over $25.

If the system manager determines that the estimated total fee is likely to exceed $25, the system manager shall notify the individual that the estimated fee must be prepaid prior to NARA's making the records available. NARA will remit any excess amount paid by the individual or bill the individual for an additional amount if there is a variation between the final fee charged and the amount prepaid.

§ 1202.54 Form of payment.

Payment shall be by check or money order payable to the National Archives and Records Administration and shall be addressed to the system manager.

[53 FR 12150, Apr. 13, 1988]

Subpart D—Requests To Amend Records

§ 1202.60 Submission of requests to amend records.

Subject individuals who desire to amend any record containing personal information about themselves should write to the NARA system manager specified in the pertinent FEDERAL

REGISTER notice concerning NARA's systems of records. A current NARA employee who desires to amend personnel records should write to the Director of Personnel, National Archives (NAP), Washington, DC 20408. Each request shall include evidence of and justification for the need to amend the pertinent record. Each request should bear the legend "Privacy Act—Request To Amend Record" prominently marked on both the face of the request letter and the envelope.

§ 1202.62 Review of requests to amend records.

(a) The system manager shall acknowledge receipt of a request to amend a record within 10 workdays. If possible, the acknowledgment should include the system manager's determination either to amend the record or to deny the request to amend as provided in § 1202.66.

(b) When reviewing a record in response to a request to amend, the system manager shall assess the accuracy, relevance, timeliness, and completeness of the existing record in light of the proposed amendment. The system manager shall determine whether the amendment is justified. With respect to a request to delete information, the system manager also shall review the request and existing record to determine whether the information is relevant and necessary to accomplish an agency purpose required to be accomplished by law or Executive order.

§ 1202.64 Approval of requests to amend.

If the system manager determines that amendment of a record is proper in accordance with the request to amend, he or she promptly shall make the necessary amendment to the record and shall send a copy of the amended record to the subject individual. Where an accounting of disclosure has been maintained, the system manager shall advise all previous recipients of the record of the fact that an amendment has been made and give the substance of the amendment. Where practicable, the system manager shall send a copy of the amended record to previous recipients. The system manager shall advise the Assistant Archivist for Management and Administration that a request to amend has been approved.

§ 1202.66 Denial of requests to amend.

(a) Except where the system manager is the Inspector General, if the system manager determines that an amendment of a record is improper or that the record should be amended in a manner other than that requested by an individual, the request to amend and the system manager's determinations and recommendations shall be referred to the Assistant Archivist for Management and Administration. If the system manager is the Inspector General, that person shall retain the responsibility for granting or denying the request to amend.

(b) If the Assistant Archivist for Management and Administration, after reviewing the request to amend a record, determines to amend the record in accordance with the request, the Assistant Archivist promptly shall return the request to the system manager with instructions to make the requested amendments in accordance with § 1202.64.

(c) If the Assistant Archivist for Management and Administration, after reviewing the request to amend a record, determines not to amend the record in accordance with the request, the Assistant Archivist promptly shall advise the requester in writing of the decision. The denial letter shall state the reasons for the denial of the request to amend; include proposed alternative amendments, if appropriate; state the requester's right to appeal the denial of the request to amend; and state the procedure for appealing.

[50 FR 27197, July 1, 1985, as amended at 54 FR 32068, Aug. 4, 1989]

§ 1202.68 Agreement to alternative amendments.

If the denial of a request to amend a record includes proposed alternative amendments, and if the requester agrees to accept them, the requester shall notify the NARA official who signed the denial letter. That official shall immediately instruct the system manager to make the necessary amendments in accordance with § 1202.64.

[54 FR 32068, Aug. 4, 1989]

§ 1202.70 Appeal of denial of request to amend a record.

(a) A requester who disagrees with a denial of a request to amend a record may file an appeal of that denial.

(1) If the denial was signed by the Assistant Archivist for Management and Administration, the requester shall address the appeal to the NARA Privacy Act Appeal Official (ND), Washington, DC 20408.

(2) If the denial was signed by the Inspector General, the requester shall address the appeal to the NARA Privacy Act Appeal Official (N), Washington, DC 20408.

(3) If the requester is an employee of NARA and the denial to amend involves a record maintained in the employee's Official Personnel Folder, as described in Chapter 293 of the Federal Personnel Manual, the appeal should be addressed to the Assistant Director, Workforce Information Office, Compliance and Investigations Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

(b) Each appeal to the NARA Privacy Act appeal official shall be in writing and must be received no later than 30 calendar days from the date of the requester's receipt of a denial of a request to amend a record. The appeal shall bear the legend "Privacy Act—Appeal," both on the face of the letter and the envelope.

(c) Upon receipt of an appeal, the NARA Privacy Act appeal official shall consult with the system manager, the official who made the denial, legal counsel, and such other officials as may be appropriate. If the NARA Privacy Act appeal official, in consultation with these officials, determines that the record should be amended as requested, he or she immediately shall instruct the system manager to amend the record in accordance with § 1202.64 and shall notify the requester of that action.

(d) If the NARA Privacy Act appeal official, in consultation with the officials specified in paragraph (c) of this section, determines that the appeal should be rejected, the NARA Privacy Act appeal official immediately shall notify the requester in writing of that determination. This action shall constitute the NARA final determination on the request to amend the record and shall include:

(1) The reasons for the rejection of the appeal;

(2) Proposed alternative amendments, if appropriate, which the requester subsequently may accept in accordance with § 1202.68;

(3) Notice of the requester's right to file a Statement of Disagreement for distribution in accordance with § 1202.72; and

(4) Notice of the requester's right to seek judicial review of the NARA final determination, as provided in § 1202.74.

(e) The NARA final determination shall be made no later than 30 workdays from the date on which the appeal is received by the NARA Privacy Act appeal official. In extraordinary circumstances, the NARA Privacy Act appeal official may extend this time limit by notifying the requester in writing before the expiration of the 30 workdays. The NARA Privacy Act appeal official's notification shall include a justification for the extension of time.

[50 FR 27197, July 1, 1985, as amended at 54 FR 32068, Aug. 4, 1989]

§ 1202.72 Statements of disagreement.

Upon receipt of a NARA final determination denying a request to amend a record, the requester may file a Statement of Disagreement with the appropriate system manager. The Statement of Disagreement shall include an explanation of why the requester believes the record to be inaccurate, irrelevant, untimely, or incomplete. The system manager shall maintain the Statement of Disagreement in conjunction with the pertinent record and shall include a copy of the Statement of Disagreement in any disclosure of the pertinent record. The system manager shall provide a copy of the Statement of Disagreement to any person or agency to whom the record has been disclosed only if the disclosure was subject to the accounting requirements of § 1202.34.

§ 1202.74 Judicial review.

Within 2 years of receipt of a NARA final determination as provided in § 1202.48 or § 1202.70, a requester may seek judicial review of that determination. A civil action must be filed in the Federal District Court in which the requester resides or has his or her principal place of business or in which the NARA records are situated, or in the District of Columbia.

Subpart E—Report on New Systems of Records and Alteration of Existing Systems

§ 1202.80 Reporting requirement.

(a) Prior to the establishment of a new NARA system of records or the alteration of an existing NARA system of records, the system manager shall notify the Assistant Archivist for Management and Administration of the proposed new system or alteration. The system manager shall include with the notification a complete description and justification for each system of records that the system manager proposes to establish or alter. If the Assistant Archivist for Management and Administration determines that the establishment or alteration of a system of records is in the best interest of the Government, the Assistant Archivist for Management and Administration will submit, no later than 60 calendar days prior to the establishment or alteration of a system of records, a report of the proposal to the President of the Senate, the Speaker of the House of Representatives, and the Director of the Office of Management and Budget for their evaluation of the probable or potential effect of the proposal on the privacy and other personal or property rights of individuals.

(b) The reports required by this regulation are exempt from reports control.

§ 1202.82 Federal Register notice of establishment of new system or alteration of existing system.

The NARA Assistant Archivist for Management and Administration shall publish in the FEDERAL REGISTER a notice of the proposed establishment or alteration of a system of records when:

(a) Notice is received that the Senate, the House of Representatives, and the Office of Management and Budget do not object to the establishment of a new system of records or to the alteration of an existing system of records, or

(b) No fewer than 30 calendar days have elapsed from the date of submission of the proposal to the Senate, the House of Representatives, and the Office of Management and Budget without receipt by NARA of an objection to the proposal.

§ 1202.84 Effective date of new systems of records or alteration of an existing system of records.

Systems of records proposed to be established or altered in accordance with this subpart shall be effective no sooner than 30 calendar days from the publication of the notice required by § 1202.82.

Subpart F—Exemptions

§ 1202.90 Specific exemptions.

(a) The following NARA systems of records are exempt from subsections (c)(3); (d); (e)(1); (e)(4) (G), (H), and (I), and (f) of the Privacy Act of 1974:

(1) Investigation Case Files, NARA-23.

(2) Personnel Security Case Files, NARA-24.

(b) These systems of records are exempt:

(1) To the extent that the systems consist of investigatory material compiled for law enforcement purposes; however, if any subject individual is denied any right, privilege, or benefit to which the individual would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would

reveal the indentity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence; and

(2) To the extent the systems of records consist of investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualification for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence.

(c) These NARA systems of records have been exempted to maintain the efficacy and integrity of investigations conducted pursuant to NARA's responsibilities in the areas of Federal employment, Government contracts, and access to security classified information.

Subpart G—Assistance and Referrals

§ 1202.100 Requests for assistance and referrals.

Requests for assistance and referral to the responsible system manager or other NARA employee charged with implementing these regulations should be made to the Assistant Archivist for Management and Administration, National Archives (NA), Washington, DC 20408.

PART 1206—NATIONAL HISTORICAL PUBLICATIONS AND RECORDS COMMISSION

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AUTHORITY: 44 U.S.C. 2104(a); 44 U.S.C. 2501-2506.

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EDITORIAL NOTE: Nomenclature changes to part 1206 appear at 50 FR 15723, 15728, Apr. 19, 1985.

Subpart A—General

§ 1206.1 Scope of part.

This part prescribes the procedures and rules governing the operation of the programs of the National Historical Publications and Records Commission.

§ 1206.2 Definitions.

(a) The term *Commission* means the National Historical Publications and Records Commission or the Chairman of the Commission or the Executive

Director of the Commission, acting on the Commission's behalf.

(b) The term *historical records* means record material having permanent or enduring value regardless of physical form or characteristics, including but not limited to manuscripts, personal papers, official records, maps, and audiovisual materials.

(c) In §§ 1206.36 and 1206.38, the term *State* means all 50 States of the Union, plus the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Northern Mariana Islands, and the Trust Territories of the Pacific.

(d) In § 1206.36(a), the term *State-funded agency* means any historical or archival agency that receives a regular State appropriation.

(e) The term *State projects* means records program projects directed by organizations operating within and involving records or activities within one State. Records or activities of such projects will typically be under the administrative control of the organization applying for the grant. The records or activities need not relate to the history of the State.

(f) The term *regional projects* means records program projects involving records or activities in more than one State in a region. Regional projects include those undertaken by regional archival groups or consortia.

(g) The term *national projects* means records program projects involving records or activities in several regions or in widely separated States. In general, the location of the records and/or the site of grant-funded activities will determine the category of submission.

[42 FR 56123, Oct. 21, 1977. Redesignated at 50 FR 15723, Apr. 19, 1985, as amended at 55 FR 21542, May 25, 1990]

§ 1206.4 Purpose of the Commission.

The National Historical Publications and Records Commission makes plans, estimates, and recommendations regarding the preservation and use of historical records that may be important for an understanding and appreciation of the history of the United States. It also cooperates with and encourages appropriate Federal, State, and local agencies and nongovernmental institutions in collecting and preserving and, when it considers it desirable, in editing and publishing the records of outstanding citizens, groups, or institutions and other important documents. On recommendation of the Commission, the Archivist of the United States makes grants to State and local agencies and to nonprofit organizations and institutions and to individuals in support of these programs.

[55 FR 21542, May 25, 1990]

§ 1206.6 Programs of the Commission.

The Commission operates primarily through a publications program (subpart B) and a records program (subpart C).

[55 FR 21542, May 25, 1990]

Subpart B—Publications Program

Source: 55 FR 21542, May 25, 1990, unless otherwise noted.

§ 1206.10 General.

This subpart describes the scope, purpose, and organization of the publications program and prescribes requirements applicable to book and microform publication projects. Grant application and administration procedures are given in subpart D of this part.

§ 1206.12 Scope and purpose.

The publications program is intended to ensure the dissemination and accessibility of documentary source material important to the study and understanding of U.S. history. Projects should therefore be based upon material of widespread interest among scholars, students, and informed citizens. Documents should have historical value and interest that transcend local and State boundaries.

§ 1206.14 Organization.

The Executive Director, the Director of the Publications Program, and the staff of the Commission administer the program under the guidance of the Commission and the immediate administrative direction of its chairman, the Archivist of the United States.

§ 1206.16 Publication projects.

(a) Each publication project shall include either the papers of a U.S. leader in a significant phase of life in the United States or documents relating to some outstanding event or to some topic or theme of national significance in U.S. history. These projects shall consist of collecting, compiling, editing, and publishing, either selectively or comprehensively, the papers or documents. Publication may be in the form of book or microform. Supplemental publication of documentary sources may also be considered when suitable preservation of the data can be assured. One copy of each book publication should be deposited with the National Historical Publications and Records Commission (NP), Washington, DC 20408.

(b) For microform projects, the grantee shall make positive prints and all finding aids available to institutions, scholars, or students through interlibrary loan and for purchase. Ten complimentary copies of guides and indexes produced by the projects shall be sent to the Commission.

§ 1206.18 Subsidies for printing costs.

(a) The Commission will consider grant applications from university and other nonprofit presses for the subvention of part of the costs of manufacturing and disseminating volumes that have been formally endorsed by the Commission. Grants not exceeding $12,000 per volume are awarded by NARA upon recommendation of the Commission to promote the widest possible use of Commission-sponsored documentary editions.

(b) The granting of a subvention shall be used to encourage the highest standards in the production of volumes, particularly the quality of paper and ink.

(c) The Commission shall receive 15 complimentary copies of each published volume for which a subvention grant is made.

§ 1206.20 Microform publication standards.

Technical standards for NHPRC-sponsored microform projects are stated in the brochure *National Historical Publications and Records Commission: Microform Guidelines*, which will be supplied to applicants upon request and to grantee institutions at the time a grant is made for a microform project. The Commission may, from time to time, revise these standards, but any changes to the standards will not apply to microform projects already in progress at the time the revision is issued.

Subpart C—Records Program

SOURCE: 55 FR 21543, May 25, 1990, unless otherwise noted.

§ 1206.30 General.

This subpart describes the scope, purpose, and organization of the records program. Grant application and administration procedures are given in subpart D of this part.

§ 1206.32 Scope and purpose.

Through its records program, the National Historical Publications and Records Commission encourages a greater effort at all levels of government and by private organizations to preserve and make available for use those records, generated in every facet of life, that further an understanding and appreciation of U.S. history. In the public sector, these historical records document significant activities of State, county, municipal, and other units of government. In the private sector, historical records include manuscripts, personal papers, and family or corporate archives that are maintained by a variety of general repositories as well as materials in special collections relating to particular fields of study, including the arts, business, education, ethnic and minority groups, immigration, labor, politics, professional services, religion, science, urban affairs, and women. In addition to recommending the supporting of projects relating directly to a body of records, the Commission may also recommend that NARA support projects to advance the state of the art, to promote cooperative efforts among institutions and organizations, and to improve the knowledge, performance, and professional skills of those who work with historical records.

§ 1206.34 Organization.

The Executive Director, Director of the Records Program, and the staff of the Commission administer the records program under the guidance of the Commission and the immediate administrative direction of its chairman, the Archivist of the United States.

§ 1206.36 State historical records coordinator.

(a) The governor of each State desiring to participate in the program shall appoint a State historical records coordinator (coordinator), who shall be the full-time professional official in charge of either the State archival agency or the State-funded historical agency. If the State has both agencies, the official in charge who is not appointed coordinator shall be a member of the State historical records advisory board. The coordinator is appointed to a four-year term with the possibility of renewal. The coordinator shall serve as chairman of the State historical records advisory board and shall be the central coordinating officer for the historical records grant program in the State. The person appointed will not be deemed to be an official or employee of the Federal Government and will receive no Federal compensation for such service. The pamphlet *Guidelines for State Historical Records Coordinators and State Historical Records Advisory Boards*, which is available from the Commission and from State historical records coordinators, provides further information on the role of the coordinator.

(b) In the absence of instructions to the contrary, the NHPRC may continue to recognize the coordinator for a period of six months beyond the expiration of his/her term. After six months, if the governor has not made an appointment, the NHPRC shall recognize an acting coordinator selected by the State board until the governor appoints a coordinator. In the event of the resignation of the coordinator or other inability to serve, a deputy coordinator, if one has been designated, will serve as acting State coordinator until the governor makes an appointment or for six months, whichever is shorter. After six months or in the absence of a deputy coordinator, the NHPRC will recognize an acting coordinator in order to conduct the necessary business of the board.

§ 1206.37 Deputy State historical records coordinator.

A deputy State historical records coordinator may be designated to assist in carrying out the duties and responsibilities of the coordinator and to serve as an acting coordinator at the coordinator's direction or upon the coordinator's resignation or other inability to serve.

§ 1206.38 State historical records advisory board.

(a) The governor of each State desiring to participate in the program shall appoint a State historical records advisory board (board) consisting of at least seven members, including the State historical records coordinator, who chairs the board. A majority of the members shall have recognized experience in the administration of government records, historical records, or archives. The board should be as broadly representative as possible of the public and private archives, records offices, and research institutions and organizations in the State. Board members will not be deemed to be officials or employees of the Federal Government and will receive no Federal compensation for their service on the board. They are appointed for three years with the possibility of renewal; terms are staggered so that one-third of the board is newly appointed or reappointed each year. If the board is not established in State law, members' terms continue until replacements are appointed. The board may adopt standards for attendance and may declare membership positions open if those standards are not met.

(b) The board is the central advisory body for historical records planning and for projects developed and carried out within the State. Specifically, the board may perform such duties as sponsoring and publishing surveys of the conditions and needs of historical records in the State; soliciting or developing proposals for projects to be carried out in the State with NHPRC grants; reviewing records proposals by institutions in the State and making recommendations about these to the Commission; developing, revising, and submitting to the Commission State priorities for historical records projects following guidelines developed by the Commission; and reviewing, through reports and otherwise, the operation and progress of records projects in the State financed by NHPRC grants.

Subpart D—Grant Procedures

SOURCE: 55 FR 21544, May 25, 1990, unless otherwise noted.

§ 1206.50 Types of grants.

(a) *General.* The Archivist of the United States, after considering the advice and recommendations of the Commission, may make three types of NHPRC grants: Outright grants, matching grants, and combined grants.

(b) *Outright grants.* An application for an outright grant requests an NHPRC grant for the entire cost of a project, minus the share of the cost borne by the applicant. The maximum possible cost sharing is encouraged in every proposal, and the level of cost sharing will be an important factor in the Commission's recommendation on most types of proposals.

(c) *Matching grants.* An application for a matching grant should be made when an applicant has prospects of securing financial support from a third party or, in the case of a State or local government agency, new funds from the institution's own appropriation source are provided expressly for the project proposed in the application. Upon NARA approval of a matching grant request, the applicant shall present written documentation certifying that matching funds have been provided for the project by the non-Federal source. In the case of a State or local government agency, the matching requirement may also be met through matching funds from the State or local government provided that it can be demonstrated to the Commission's satisfaction that the matching amount has been provided above and beyond funds previously allocated or planned for the agency's budget and that the funds are set aside exclusively to support the project proposed for an NHPRC grant. Applicants need not, however, have money in hand to make a matching grant request; they need only assure the Commission that they have reasonable prospects of obtaining the needed amounts. Federal matching funds may be released only after the proposal is recommended by the Commission and approved by NARA and after documentation has been submitted to the Commission demonstrating that the matching funds have been obtained from the non-Federal source.

(d) *Combined grants.* A combined grant comprises both outright funds and matching funds. When the funds an applicant can raise plus the equivalent amount of an NHPRC grant do not equal the required budget, the difference is requested in outright funds. For example, if the applicant needs $75,000 and is able to raise $25,000 in gifts or in a new appropriation for the project, a combined grant of $25,000 outright and $25,000 in matching funds for a total of $50,000 should be requested from the Commission. Rules governing the release of matching funds in matching grants also govern the release of matching funds in combined grants.

§ 1206.52 Grant limitations.

Grant limitations are described in publications and records program guidelines pamphlets available on request from the Commission.

§ 1206.54 Who may apply.

The Commission will consider applications from State and local government agencies, nonprofit organizations and institutions, and, under certain conditions, from individuals. Proposals under the records program for State projects will be accepted only from applicants in States in which a State historical records coordinator and a State historical records advisory board have been appointed. This requirement does not apply to regional or national projects.

§ 1206.56 When to apply.

Grant proposals are considered during Commission meetings held three times during the year. For current applications deadlines contact the staff of the appropriate Commission program or State historical records coordinators (for records grant proposals). Some State boards have established pre-submission review deadlines for proposals under the records program; further information is available from State coordinators.

§ 1206.58 How to apply.

(a) *Contact with NHPRC staff.* The Commission encourages applicants to discuss proposals through correspondence, by phone, or in person with Commission staff and/or, in the case of records proposals, with the appropriate State historical records coordinator before the proposal is submitted and at all stages of development of the proposal.

(b) *Application forms.* Applicants for NHPRC grants shall use Standard Form 424, Application for Federal Assistance, and NA Form 17001, Budget Form (OMB Control Number 3095-0004). Both forms are available from the Commission. Project proposals and related correspondence should be sent to the National Historical Publications and Records Commission (NP), Washington, DC 20408.

(c) *Assurances and certifications.* All grant applications to the Commission must include the following assurances and certifications signed by an authorized certifying official of the applicant: Standard Form 424B, Assurance: Non-Construction Programs; the Certification Regarding Suspension, Debarment, and Other Responsibility Matters specified in part 1209, appendix B; and the Certification Regarding Drug-free Workplace Requirements specified in part 1209, appendix C, of this chapter. Assurance and certification language is included in the program pamphlets.

(d) *Program guidelines pamphlets.* Supplementary information for applicants is contained in the pamphlets, *Records Program Guidelines and Procedures: Applications and Grants,* and *Publications Program Guidelines and Procedures: Applications and Grants,* which are available from the Commission upon request. The records program guidelines pamphlet is also available from State historical records coordinators. These pamphlets include copies of the application form and certifications, guidelines on the preparation of project budgets and program narrative statements, and other guidance on applying for and administering NHPRC grants.

§ 1206.66 Review and evaluation of grant proposals.

(a) *Records grant proposals.* For records grant proposals, State historical records advisory boards review and evaluate proposals for State projects and forward recommendations for action to the Commission. Boards may decide that certain proposals are incomplete or require further development; in these instances proposals may be returned to the applicant by the board with a recommendation for revision and resubmission in a future funding cycle. The Commission staff shall be informed of the recommendations. All records grant proposals for which recommendations for Commission action are received from State boards and regional, national, and State board-sponsored proposals received directly by the Commission are reviewed by the Commission staff for completeness, conformity with application requirements and relevance to the objectives of the grant program. Regional and national proposals and proposals submitted by boards on their own behalf may also be referred by the Commission staff to selected State historical records coordinators, members of boards, or others for appropriate review and evaluation of the projects. Following review and evaluation, proposals are referred to the Commission at regular meetings.

(b) *Publications grant proposals.* The Commission staff reviews publication grant proposals for completeness, conformity with application requirements, and relevance to the objectives of the grant program. Proposals are sent to specialists in American history for review and recommendations. The recommendations are considered by the full Commission at regular meetings.

(c) *Subvention grant applications.* Applications for subvention grants are reviewed by a panel of persons knowledgeable in the publishing field, which reports to the Commission its findings and recommendations.

§ 1206.68 Grant administration responsibilities.

Primary responsibility for the administration of grants is shared by the grantee institution and the project director designated by the institution. Grants shall be administered in conformance with the regulations in parts 1207 and 1209 of this chapter.

§ 1206.70 Grant instrument.

The grant award instrument is a letter from the Archivist of the United States to the grantee. The letter and attachments specify terms of the grant.

§ 1206.78 Grant reports.

Financial status reports and narrative progress reports are required for all grants. Standard Form 269 or 269A, Financial Status Report, shall be used for all financial reports. Reports are due 30 days after the end of each six-month period. Final reports are due within 90 days after the expiration or termination of the grant period. Grants with a duration of six months or less require a final report only. Grant projects that have been funded continuously for three years or more shall report annually. All other grant projects shall report semiannually. Additional rules on financial and performance reports are found in §§ 1207.40 and 1207.41 of this chapter.

§ 1206.80 Safety precautions.

NARA and the Commission cannot assume any liability for accidents, illnesses, or claims arising out of any work undertaken with the assistance of the grant.

§ 1206.82 Acknowledgment.

Grantee institutions, grant directors, or grant staff personnel may publish results of any work supported by an NHPRC grant without review by the Commission. Publications or other products resulting from the project, shall, however, acknowledge the assistance of the NHPRC grant.

§ 1206.94 Compliance with Governmentwide requirements.

In addition to the grant application and grant administration requirements outlined in this part 1206, grantees are responsible for complying with applicable Governmentwide requirements contained in parts 1207 and 1209 of this chapter.

PART 1207—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

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AUTHORITY: 44 U.S.C. 2104.

SOURCE: 53 FR 8072, 8087, Mar. 11, 1988, unless otherwise noted.

Subpart A—General

§ 1207.1 Purpose and scope of this part.

This part establishes uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments.

§ 1207.2 Scope of subpart.

This subpart contains general rules pertaining to this part and procedures for control of exceptions from this part.

§ 1207.3 Definitions.

As used in this part:

Accrued expenditures mean the charges incurred by the grantee during a given period requiring the provision of funds for: (1) Goods and other tangible property received; (2) services performed by employees, contractors, subgrantees, subcontractors, and other payees; and (3) other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

Accrued income means the sum of: (1) Earnings during a given period from services performed by the grantee and goods and other tangible property delivered to purchasers, and (2) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

Acquisition cost of an item of purchased equipment means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

Administrative requirements mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from *programmatic* requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

Awarding agency means (1) with respect to a grant, the Federal agency, and (2) with respect to a subgrant, the party that awarded the subgrant.

Cash contributions means the grantee's cash outlay, including the outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other assistance agreements may be considered as grantee or subgrantee cash contributions.

Contract means (except as used in the definitions for *grant* and *subgrant* in this section and except where qualified by *Federal*) a procurement contract under a grant or subgrant, and means a procurement subcontract under a contract.

Cost sharing or matching means the value of the third party in-kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal Government.

Cost-type contract means a contract or subcontract under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs, with or without a fee.

Equipment means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

Expenditure report means: (1) For nonconstruction grants, the SF-269 "Financial Status Report" (or other equivalent report); (2) for construction grants, the SF-271 "Outlay Report and Request for Reimbursement" (or other equivalent report).

Federally recognized Indian tribal government means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

Government means a State or local government or a federally recognized Indian tribal government.

Grant means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

Grantee means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

Local government means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

Obligations means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

OMB means the United States Office of Management and Budget.

Outlays (expenditures) mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of inkind contributions applied, and the new increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

Percentage of completion method refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's cost incurred.

Prior approval means documentation evidencing consent prior to incurring specific cost.

Real property means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

Share, when referring to the awarding agency's portion of real property, equipment or supplies, means the same percentage as the awarding agency's portion of the acquiring party's total costs under the grant to which the acquisition costs under the grant to which the acquisition cost of the property was charged. Only costs are to be counted—not the value of third-party in-kind contributions.

State means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under United States Housing Act of 1937.

Subgrant means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of *grant* in this part.

Subgrantee means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

Supplies means all tangible personal property other than *equipment* as defined in this part.

Suspension means depending on the context, either (1) temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant, or (2) an action taken by a suspending official in accordance with agency regulations implementing E.O. 12549 to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

Termination means permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee. *Termination* does not include: (1) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period; (2) withdrawal of the unobligated balance as of the expiration of a grant; (3) refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or (4) voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

Terms of a grant or subgrant mean all requirements of the grant or subgrant, whether in statute, regulations, or the award document.

Third party in-kind contributions mean property or services which benefit a federally assisted project or program and which are contributed by non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement.

Unliquidated obligations for reports prepared on a cash basis mean the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

Unobligated balance means the portion of the funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

§ 1207.4 Applicability.

(a) *General.* Subparts A through D of this part apply to all grants and subgrants to governments, except where inconsistent with Federal statutes or with regulations authorized in accordance with the exception provision of § 1207.6, or:

(1) Grants and subgrants to State and local institutions of higher education or State and local hospitals.

(2) The block grants authorized by the Omnibus Budget Reconciliation Act of 1981 (Community Services; Pre-

ventive Health and Health Services; Alcohol, Drug Abuse, and Mental Health Services; Maternal and Child Health Services; Social Services; Low-Income Home Energy Assistance; States' Program of Community Development Block Grants for Small Cities; and Elementary and Secondary Education other than programs administered by the Secretary of Education under Title V, Subtitle D, Chapter 2, Section 583—the Secretary's discretionary grant program) and Titles I-III of the Job Training Partnership Act of 1982 and under the Public Health Services Act (Section 1921), Alcohol and Drug Abuse Treatment and Rehabilitation Block Grant and Part C of Title V, Mental Health Service for the Homeless Block Grant).

(3) Entitlement grants to carry out the following programs of the Social Security Act:

(i) Aid to Needy Families with Dependent Children (Title IV-A of the Act, not including the Work Incentive Program (WIN) authorized by section 402(a)19(G); HHS grants for WIN are subject to this part);

(ii) Child Support Enforcement and Establishment of Paternity (Title IV-D of the Act);

(iii) Foster Care and Adoption Assistance (Title IV-E of the Act);

(iv) Aid to the Aged, Blind, and Disabled (Titles I, X, XIV, and XVI-AABD of the Act); and

(v) Medical Assistance (Medicaid) (Title XIX of the Act) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B).

(4) Entitlement grants under the following programs of The National School Lunch Act:

(i) School Lunch (section 4 of the Act),

(ii) Commodity Assistance (section 6 of the Act),

(iii) Special Meal Assistance (section 11 of the Act),

(iv) Summer Food Service for Children (section 13 of the Act), and

(v) Child Care Food Program (section 17 of the Act).

(5) Entitlement grants under the following programs of The Child Nutrition Act of 1966:

(i) Special Milk (section 3 of the Act), and

(ii) School Breakfast (section 4 of the Act).

(6) Entitlement grants for State Administrative expenses under The Food Stamp Act of 1977 (section 16 of the Act).

(7) A grant for an experimental, pilot, or demonstration project that is also supported by a grant listed in paragraph (a)(3) of this section;

(8) Grant funds awarded under subsection 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e)) and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96-422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits;

(9) Grants to local education agencies under 20 U.S.C. 236 through 241-1(a), and 242 through 244 (portions of the Impact Aid program), except for 20 U.S.C. 238(d)(2)(c) and 240(f) (Entitlement Increase for Handicapped Children); and

(10) Payments under the Veterans Administration's State Home Per Diem Program (38 U.S.C. 641(a)).

(b) *Entitlement programs.* Entitlement programs enumerated above in § 1207.4(a) (3) through (8) are subject to subpart E.

§ 1207.5 Effect on other issuances.

All other grants administration provisions of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with this part are superseded, except to the extent they are required by statute, or authorized in accordance with the exception provision in § 1207.6.

§ 1207.6 Additions and exceptions

(a) For classes of grants and grantees subject to this part, Federal agencies may not impose additional administrative requirements except in codified regulations published in the FEDERAL REGISTER.

(b) Exceptions for classes of grants or grantees may be authorized only by OMB.

(c) Exceptions on a case-by-case basis and for subgrantees may be authorized by the affected Federal agencies.

Subpart B—Pre-Award Requirements

§ 1207.10 Forms for applying for grants.

(a) *Scope.* (1) This section prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying for grants. This section is not applicable, however, to formula grant programs which do not require applicants to apply for funds on a project basis.

(2) This section applies only to applications to Federal agencies for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged to avoid more detailed or burdensome application requirements for subgrants.

(b) *Authorized forms and instructions for governmental organizations.* (1) In applying for grants, applicants shall only use standard application forms or those prescribed by the granting agency with the approval of OMB under the Paperwork Reduction Act of 1980.

(2) Applicants are not required to submit more than the original and two copies of preapplications or applications.

(3) Applicants must follow all applicable instructions that bear OMB clearance numbers. Federal agencies may specify and describe the programs, functions, or activities that will be used to plan, budget, and evaluate the work under a grant. Other supplementary instructions may be issued only with the approval of OMB to the extent required under the Paperwork Reduction Act of 1980. For any standard form, except the SF-424 facesheet, Federal agencies may shade out or instruct the applicant to disregard any line item that is not needed.

(4) When a grantee applies for additional funding (such as a continuation or supplemental award) or amends a previously submitted application, only the affected pages need be submitted. Previously submitted pages with information that is still current need not be resubmitted.

§ 1207.11 State plans.

(a) *Scope.* The statutes for some programs require States to submit plans before receiving grants. Under regulations implementing Executive Order 12372, "Intergovernmental Review of Federal Programs," States are allowed to simplify, consolidate and substitute plans. This section contains additional provisions for plans that are subject to regulations implementing the Executive order.

(b) *Requirements.* A State need meet only Federal administrative or programmatic requirements for a plan that are in statutes or codified regulations.

(c) *Assurances.* In each plan the State will include an assurance that the State shall comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For this assurance and other assurances required in the plan, the State may:

(1) Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the assurances required by those provisions,

(2) Repeat the assurance language in the statutes or regulations, or

(3) Develop its own language to the extent permitted by law.

(d) *Amendments.* A State will amend a plan whenever necessary to reflect: (1) New or revised Federal statutes or regulations or (2) a material change in any State law, organization, policy, or State agency operation. The State will obtain approval for the amendment and its effective date but need submit for approval only the amended portions of the plan.

§ 1207.12 Special grant or subgrant conditions for "high-risk" grantees.

(a) A grantee or subgrantee may be considered "high risk" if an awarding agency determines that a grantee or subgrantee:

(1) Has a history of unsatisfactory performance, or

(2) Is not financially stable, or

(3) Has a management system which does not meet the management standards set forth in this part, or

(4) Has not conformed to terms and conditions of previous awards, or

(5) Is otherwise not responsible; and if the awarding agency determines that an award will be made, special conditions and/or restrictions shall correspond to the high risk condition and shall be included in the award.

(b) Special conditions or restrictions may include:

(1) Payment on a reimbursement basis;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;

(3) Requiring additional, more detailed financial reports;

(4) Additional project monitoring;

(5) Requiring the grante or subgrantee to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(c) If an awarding agency decides to impose such conditions, the awarding official will notify the grantee or subgrantee as early as possible, in writing, of:

(1) The nature of the special conditions/restrictions;

(2) The reason(s) for imposing them;

(3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions and

(4) The method of requesting reconsideration of the conditions/restrictions imposed.

Subpart C—Post-Award Requirements

FINANCIAL ADMINISTRATION

§ 1207.20 Standards for financial management systems.

(a) A State must expand and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to—

(1) Permit preparation of reports required by this part and the statutes authorizing the grant, and

(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(b) The financial management systems of other grantees and subgrantees must meet the following standards:

(1) *Financial reporting.* Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

(2) *Accounting records.* Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) *Internal control.* Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

(4) *Budget control.* Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) *Allowable cost.* Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.

(6) *Source documentation.* Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

(7) *Cash management.* Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by letter-of-credit or electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.

(c) An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.

§ 1207.21 Payment.

(a) *Scope.* This section prescribes the basic standard and the methods under which a Federal agency will make payments to grantees, and grantees will make payments to subgrantees and contractors.

(b) *Basic standard.* Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR Part 205.

(c) *Advances.* Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.

(d) *Reimbursement.* Reimbursement shall be the preferred method when the requirements in paragraph (c) of this section are not met. Grantees and subgrantees may also be paid by reimbursement for any construction grant. Except as otherwise specified in regulation, Federal agencies shall not use the percentage of completion method to pay construction grants. The grantee or subgrantee may use that method to pay its construction contractor, and if it does, the awarding agency's payments to the grantee or subgrantee will be based on the grantee's or subgrantee's actual rate of disbursement.

(e) *Working capital advances.* If a grantee cannot meet the criteria for advance payments described in paragraph (c) of this section, and the Federal agency has determined that reimbursement is not feasible because the grantee lacks sufficient working capital, the awarding agency may provide cash or a working capital advance basis. Under this procedure the awarding agency shall advance cash to the grantee to cover its estimated disbursement needs for an initial period generally geared to the grantee's disbursing cycle. Thereafter, the awarding agency shall reimburse the grantee for its actual cash disbursements. The working capital advance method of payment shall not be used by grantees or subgrantees if the reason for using such method is the unwillingness or inability of the grantee to provide timely advances to the subgrantee to meet the subgrantee's actual cash disbursements.

(f) *Effect of program income, refunds, and audit recoveries on payment.* (1) Grantees and subgrantees shall disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.

(2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(g) *Withholding payments.* (1) Unless otherwise required by Federal statute, awarding agencies shall not withhold payments for proper charges incurred by grantees or subgrantees unless—

(i) The grantee or subgrantee has failed to comply with grant award conditions or

(ii) The grantee or subgrantee is indebted to the United States.

(2) Cash withheld for failure to comply with grant award condition, but without suspension of the grant, shall be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with § 1207.43(c).

(3) A Federal agency shall not make payment to grantees for amounts that are withheld by grantees or subgrantees from payment to contractors to assure satisfactory completion of work. Payments shall be made by the Federal agency when the grantees or subgrantees actually disburse the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(h) *Cash depositories.* (1) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230.

(2) A grantee or subgrantee shall maintain a separate bank account only when required by Federal-State agreement.

(i) *Interest earned on advances.* Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and the Indian Self-Determination Act (23 U.S.C. 450), grantees and subgrantees shall promptly, but at least quarterly, remit interest earned on advances to the Federal agency. The grantee or subgrantee may keep interest amounts up to $100 per year for administrative expenses.

§ 1207.22 Allowable costs.

(a) *Limitation on use of funds.* Grant funds may be used only for:

(1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and

(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.

(b) *Applicable cost principles.* For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles.

For the costs of a—	Use the principles in—
State, local or Indian tribal government.	OMB Circular A-87.
Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) organization named in OMB Circular A-122 as not subject to that circular.	OMB Circular A-122.
Educational institutions	OMB Circular A-21.
For-profit organization other than a hospital and an organization named in OBM Circular A-122 as not subject to that circular.	48 CFR Part 31. Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency.

§ 1207.23 Period of availability of funds.

(a) *General.* Where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.

(b) *Liquidation of obligations.* A grantee must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the annual Financial Status Report (SF-269). The Federal agency may extend this deadline at the request of the grantee.

§ 1207.24 Matching or cost sharing.

(a) *Basic rule: Costs and contributions acceptable.* With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

(1) Allowable costs incurred by the grantee, subgrantee or a cost-type contractor under the assistance agreement. This includes allowable costs borne by non-Federal grants or by others cash donations from non-Federal third parties.

(2) The value of third party in-kind contributions applicable to the period to which the cost sharing or matching requirements applies.

(b) *Qualifications and exceptions*—(1) *Costs borne by other Federal grant agreements.* Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another Federal grant.

(2) *General revenue sharing.* For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.

(3) *Cost or contributions counted towards other Federal costs-sharing requirements.* Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.

(4) *Costs financed by program income.* Costs financed by program income, as defined in § 1207.25, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement. (This use of general program income is described in § 1207.25(g).)

(5) *Services or property financed by income earned by contractors.* Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(6) *Records.* Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantee or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(7) *Special standards for third party in-kind contributions.* (i) Third party in-kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(ii) Some third party in-kind contributions are goods and services that, if the grantee, subgrantee, or contractor receiving the contribution had to pay for them, the payments would have been an indirect costs. Costs sharing or matching credit for such contributions shall be given only if the grantee, subgrantee, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(iii) A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost sharing or matching requirement only if it results in:

(A) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee) or

(B) A cost savings to the grantee or subgrantee.

(iv) The values placed on third party in-kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

(c) *Valuation of donated services*—(1) *Volunteer services.* Unpaid services provided to a grantee or subgrantee by individuals will be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. If the grantee or subgrantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) *Employees of other organizations.* When an employer other than a grantee, subgrantee, or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (c)(1) of this section applies.

(d) *Valuation of third party donated supplies and loaned equipment or space.* (1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

(e) *Valuation of third party donated equipment, buildings, and land.* If a third party donates equipment, buildings, or land, and title passes to a grantee or subgrantee, the treatment of the donated property will depend upon the purpose of the grant or subgrant, as follows:

(1) *Awards for capital expenditures.* If the purpose of the grant or subgrant is to assist the grantee or subgrantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching,

(2) *Other awards.* If assisting in the acquisition of property is not the purpose of the grant or subgrant, paragraphs (e)(2) (i) and (ii) of this section apply:

(i) If approval is obtained from the awarding agency, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant, the terms of the grant agreement may require that the approval be obtained from the Federal agency as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

(ii) If approval is not obtained under paragraph (e)(2)(i) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in § 1207.22, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

(f) *Valuation of grantee or subgrantee donated real property for construction/acquisition.* If a grantee or subgrantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost sharing or matching.

(g) *Appraisal of real property.* In some cases under paragraphs (d), (e) and (f) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the Federal agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.

§ 1207.25 Program income.

(a) *General.* Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

(b) *Definition of program income.* Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. "During the grant period" is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

(c) *Cost of generating program income.* If authorized by Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.

(d) *Governmental revenues.* Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement or Federal agency regulations as program income.

(e) *Royalties.* Income from royalties and license fees for copyrighted material, patents, and inventions developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant agreement or Federal agency regulations as program income. (See § 1207.34.)

(f) *Property.* Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of §§ 1207.31 and 1207.32.

(g) *Use of program income.* Program income shall be deducted from outlays which may be both Federal and non-Federal as described below, unless the Federal agency regulations or the grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income. When Federal agencies authorize the alternatives in paragraphs (g) (2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays.

(1) *Deduction.* Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the Federal agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the Federal agency and grantee contributions rather than to increase the funds committed to the project.

(2) *Addition.* When authorized, program income may be added to the funds committed to the grant agreement by the Federal agency and the grantee. The program income shall be used for the purposes and under the conditions of the grant agreement.

(3) *Cost sharing or matching.* When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.

(h) *Income after the award period.* There are no Federal requirements governing the disposition of program income earned after the end of the award period (i.e., until the ending date of the final financial report, see paragraph (a) of this section), unless the terms of the agreement or the Federal agency regulations provide otherwise.

§ 1207.26 Non-Federal audit.

(a) *Basic rule.* Grantees and subgrantees are responsible for obtaining audits in accordance with the Single Audit Act of 1984 (31 U.S.C. 7501-7) and Federal agency implementing regulations. The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

(b) *Subgrantees.* State or local governments, as those terms are defined for purposes of the Single Audit Act, that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subgrantee shall:

(1) Determine whether State or local subgrantees have met the audit requirements of the Act and whether subgrantees covered by OMB Circular A-110, "Uniform Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations" have met the audit requirement. Commercial contractors (private forprofit and private and governmental organizations) providing goods and services to State and local governments are not required to have a single audit performed. State and local govenments should use their own procedures to ensure that the contractor has complied with laws and regulations affecting the expenditure of Federal funds;

(2) Determine whether the subgrantee spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subgrantee made in accordance with the Act, Circular A-110, or through other means (e.g., program reviews) if the subgrantee has not had such an audit;

(3) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instance of noncompliance with Federal laws and regulations;

(4) Consider whether subgrantee audits necessitate adjustment of the grantee's own records; and

(5) Require each subgrantee to permit independent auditors to have access to the records and financial statements.

(c) *Auditor selection.* In arranging for audit services, § 1207.36 shall be followed.

CHANGES, PROPERTY, AND SUBAWARDS

§ 1207.30 Changes.

(a) *General.* Grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the awarding agency, certain types of post-award changes in budgets and projects shall require the prior written approval of the awarding agency.

(b) *Relation to cost principles.* The applicable cost principles (see § 1207.22) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (f) of this section do not.

(c) *Budget changes*—(1) *Nonconstruction projects.* Except as stated in other regulations or an award document, grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following changes is anticipated under a nonconstruction award:

(i) Any revision which would result in the need for additional funding.

(ii) Unless waived by the awarding agency, cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed ten percent of the current total approved budget, whenever the awarding agency's share exceeds $100,000.

(iii) Transfer of funds allotted for training allowances (i.e., from direct payments to trainees to other expense categories).

(2) *Construction projects.* Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.

(3) *Combined construction and nonconstruction projects.* When a grant or subgrant provides funding for both construction and nonconstruction activities, the grantee or subgrantee must obtain prior written approval from the awarding agency before making any fund or budget transfer from nonconstruction to construction or vice versa.

(d) *Programmatic changes.* Grantees or subgrantees must obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:

(1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).

(2) Need to extend the period of availability of funds.

(3) Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.

(4) Under nonconstruction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award. This approval requirement is in addition to the approval requirements of § 1207.36 but does not apply to the procurement of equipment, supplies, and general support services.

(e) *Additional prior approval requirements.* The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) of this section.

(f) *Requesting prior approval.* (1) A request for prior approval of any budget revision will be in the same budget formal the grantee used in its application and shall be accompanied by a narrative justification for the proposed revision.

(2) A request for a prior approval under the applicable Federal cost principles (see § 1207.22) may be made by letter.

(3) A request by a subgrantee for prior approval will be addressed in writing to the grantee. The grantee will promptly review such request and shall approve or disapprove the request in writing. A grantee will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal grant to the grantee. If the revision, requested by the subgrantee would result in a change to the grantee's approved project which requires Federal prior approval, the grantee will obtain the Federal agency's approval before approving the subgrantee's request.

§ 1207.31 Real property.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *Use.* Except as otherwise provided by Federal statutes, real property will be used for the originally authorized purposes as long as needed for that purposes, and the grantee or subgrantee shall not dispose of or encumber its title or other interests.

(c) *Disposition.* When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency. The instructions will provide for one of the following alternatives:

(1) *Retention of title.* Retain title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) *Sale of property.* Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual

and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) *Transfer of title.* Transfer title to the awarding agency or to a third-party designated/approved by the awarding agency. The grantee or subgrantee shall be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

§ 1207.32 Equipment.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *States.* A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other grantees and subgrantees will follow paragraphs (c) through (e) of this section.

(c) *Use.* (1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.

(2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in § 1207.25(a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.

(4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.

(d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) *Disposition.* When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than $5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.

(2) Items of equipment with a current per unit fair market value in excess of $5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.

(f) *Federal equipment.* In the event a grantee or subgrantee is provided federally-owned equipment:

(1) Title will remain vested in the Federal Government.

(2) Grantees or subgrantees will manage the equipment in accordance with Federal agency rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the Federal agency.

(g) *Right to transfer title.* The Federal awarding agency may reserve the right to transfer title to the Federal Government or a third part named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:

(1) The property shall be identified in the grant or otherwise made known to the grantee in writing.

(2) The Federal awarding agency shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar-day period the grantee shall follow § 1207.32(e).

(3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

§ 1207.33 Supplies.

(a) *Title.* Title to supplies acquired under a grant or subgrant will vest, upon acquisition, in the grantee or subgrantee respectively.

(b) *Disposition.* If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other federally sponsored programs or projects, the grantee or subgrantee shall compensate the awarding agency for its share.

§ 1207.34 Copyrights.

The Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

(a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and

(b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

§ 1207.35 Subawards to debarred and suspended parties.

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

§ 1207.36 Procurement.

(a) *States.* When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) *Procurement standards.* (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative anaylsis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only—

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) *Competition.* (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of § 1207.36. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) *Methods of procurement to be followed*—(1) *Procurement by small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than $25,000 in the aggregate. If small purchase procurements are used, price or rate quotations will be obtained from an adequate number of qualified sources.

(2) Procurement by *sealed bids* (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in § 1207.36(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by *competitive proposals.* The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by *noncompetitive proposals* is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) *Contracting with small and minority firms, women's business enterprise and labor surplus area firms.* (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

(f) *Contract cost and price.* (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price resonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality

of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see § 1207.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) *Awarding agency review.* (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solication has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc., when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this seciton; or

(ii) The procurement is expected to exceed $25,000 and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed $25,000, specifies a "brand name" product; or

(iv) The proposed award over $25,000 is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than $25,000.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) *Bonding requirements.* For construction or facility improvement contracts or subconstracts exceeding $100,000, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) *A bid guarantee from each bidder equivalent to five percent of the bid price.* The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) *A performance bond on the part of the contractor for 100 percent of the contract price.* A "performance bond"

is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) *A payment bond on the part of the contractor for 100 percent of the contract price.* A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) *Contract provisions.* A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate (Contracts other than small purchases).

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement (All contracts in excess of $10,000).

(3) Compliance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60) (All construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees).

(4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and subgrants for construction or repair).

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of $2,000 awarded by grantees and subgrantees when required by Federal grant program legislation).

(6) Compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of $2,000, and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (Contracts, subcontracts, and subgrants of amounts in excess of $100,000).

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

§ 1207.37 Subgrants.

(a) *States.* States shall follow state law and procedures when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. States shall:

(1) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations;

(2) Ensure that subgrantees are aware of requirements imposed upon them by Federal statute and regulation;

(3) Ensure that a provision for compliance with § 1207.42 is placed in every cost reimbursement subgrant; and

(4) Conform any advances of grant funds to subgrantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies.

(b) *All other grantees.* All other grantees shall follow the provisions of this part which are applicable to awarding agencies when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. Grantees shall:

(1) Ensure that every subgrant includes a provision for compliance with this part;

(2) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations; and

(3) Ensure that subgrantees are aware of requirements imposed upon them by Federal statutes and regulations.

(c) *Exceptions.* By their own terms, certain provisions of this part do not apply to the award and administration of subgrants:

(1) Section 1207.10;

(2) Section 1207.11;

(3) The letter-of-credit procedures specified in Treasury Regulations at 31 CFR Part 205, cited in § 1207.21; and

(4) Section 1207.50.

REPORTS, RECORDS, RETENTION, AND ENFORCEMENT

§ 1207.40 Monitoring and reporting program performance.

(a) *Monitoring by grantees.* Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.

(b) *Nonconstruction performance reports.* The Federal agency may, if it decides that performance information available from subsequent applications contains sufficient information to meet its programmatic needs, require the grantee to submit a performance report only upon expiration or termination of grant support. Unless waived by the Federal agency this report will be due on the same date as the final Financial Status Report.

(1) Grantees shall submit annual performance reports unless the awarding agency requires quarterly or semi-annual reports. However, performance reports will not be required more frequently than quarterly. Annual reports shall be due 90 days after the grant year, quarterly or semi-annual reports shall be due 30 days after the reporting period. The final performance report will be due 90 days after the expiration or termination of grant support. If a justified request is submitted by a grantee, the Federal agency may extend the due date for any performance report. Additionally, requirements for unnecessary performance reports may be waived by the Federal agency.

(2) Performance reports will contain, for each grant, brief information on the following:

(i) A comparison of actual accomplishments to the objectives established for the period. Where the output of the project can be quantified, a computation of the cost per unit of output may be required if that information will be useful.

(ii) The reasons for slippage if established objectives were not met.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(3) Grantees will not be required to submit more than the original and two copies of performance reports.

(4) Grantees will adhere to the standards in this section in prescribing performance reporting requirements for subgrantees.

(c) *Construction performance reports.* For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by Federal agencies to monitor progress under construction grants and subgrants. The Federal agency will require additional formal performance reports only when considered necessary, and never more frequently than quarterly.

(d) *Significant developments.* Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the grantee must inform the Federal agency as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

(e) Federal agencies may make site visits as warranted by program needs.

(f) *Waivers, extensions.* (1) Federal agencies may waive any performance report required by this part if not needed.

(2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may extend the due date for any performance report from a subgrantee if the grantee will still be able to meet its performance reporting obligations to the Federal agency.

§ 1207.41 Financial reporting.

(a) *General.* (1) Except as provided in paragraphs (a) (2) and (5) of this section, grantees will use only the forms specified in paragraphs (a) through (e) of this section, and such supplementary or other forms as may from time to time be authorized by OMB, for:

(i) Submitting financial reports to Federal agencies, or

(ii) Requesting advances or reimbursements when letters of credit are not used.

(2) Grantees need not apply the forms prescribed in this section in dealing with their subgrantees. However, grantees shall not impose more burdensome requirements on subgrantees.

(3) Grantees shall follow all applicable standard and supplemental Federal agency instructions approved by OMB to the extend required under the Paperwork Reduction Act of 1980 for use in connection with forms specified in paragraphs (b) through (e) of this section. Federal agencies may issue substantive supplementary instructions only with the approval of OMB. Federal agencies may shade out or instruct the grantee to disregard any line item that the Federal agency finds unnecessary for its decisionmaking purposes.

(4) Grantees will not be required to submit more than the original and two copies of forms required under this part.

(5) Federal agencies may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. Federal agencies may accept the required information from grantees in machine usable format or computer printouts instead of prescribed forms.

(6) Federal agencies may waive any report required by this section if not needed.

(7) Federal agencies may extend the due date of any financial report upon receiving a justified request from a grantee.

(b) *Financial Status Report*—(1) *Form.* Grantees will use Standard Form 269 or 269A, Financial Status Report, to report the status of funds for all nonconstruction grants and for construction grants when required in accordance with § 1207.41(e)(2)(iii).

(2) *Accounting basis.* Each grantee will report program outlays and program income on a cash or accrual basis as prescribed by the awarding agency. If the Federal agency requires accrual information and the grantee's accounting records are not normally kept on the accural basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through and analysis of the documentation on hand.

(3) *Frequency.* The Federal agency may prescribe the frequency of the report for each project or program. However, the report will not be required more frequently than quarterly. If the Federal agency does not specify the frequency of the report, it will be submitted annually. A final report will be required upon expiration or termination of grant support.

(4) *Due date.* When reports are required on a quarterly or semiannual basis, they will be due 30 days after the reporting period. When required on an annual basis, they will be due 90 days after the grant year. Final reports will be due 90 days after the expiration or termination of grant support.

(c) *Federal Cash Transactions Report*—(1) *Form.* (i) For grants paid by letter or credit, Treasury check advances or electronic transfer of funds, the grantee will submit the Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a, unless the terms of the award exempt the grantee from this requirement.

(ii) These reports will be used by the Federal agency to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from grantees. The format of the report may be adapted as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment provided that the information to be submitted is not changed in substance.

(2) *Forecasts of Federal cash requirements.* Forecasts of Federal cash requirements may be required in the "Remarks" section of the report.

(3) *Cash in hands of subgrantees.* When considered necessary and feasible by the Federal agency, grantees may be required to report the amount of cash advances in excess of three days' needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(4) *Frequency and due date.* Grantees must submit the report no later than 15 working days following the end of each quarter. However, where an advance either by letter of credit or electronic transfer of funds is authorized at an annualized rate of one million dollars or more, the Federal agency may require the report to be submitted within 15 working days following the end of each month.

(d) *Request for advance or reimbursement*—(1) *Advance payments.* Requests for Treasury check advance payments will be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form will not be used for drawdowns under a letter of credit, electronic funds transfer or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) *Reimbursements.* Requests for reimbursement under nonconstruction grants will also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see paragraph (e)(1) of this section.)

(3) The frequency for submitting payment requests is treated in § 1207.41(b)(3).

(e) *Outlay report and request for reimbursement for construction programs*—(1) *Grants that support construction activities paid by reimbursement method.* (i) Requests for reimbursement under construction grants will be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. Federal agencies may, however, prescribe the Request for Advance or Reimbursement form, specified in § 1207.41(d), instead of this form.

(ii) The frequency for submitting reimbursement requests is treated in § 1207.41(b)(3).

(2) *Grants that support construction activities paid by letter of credit, electronic funds transfer or Treasury check advance.* (i) When a construction grant is paid by letter of credit, electronic funds transfer or Treasury check advances, the grantee will report its outlays to the Federal agency using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. The Federal agency will provide any necessary special instruction. However, frequency and due date shall be governed by § 1207.41(b) (3) and (4).

(ii) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances will be requested on the form specified in § 1207.41(d).

(iii) The Federal agency may substitute the Financial Status Report specified in § 1207.41(b) for the Outlay Report and Request for Reimbursement for Construction Programs.

(3) *Accounting basis.* The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by § 1207.41(b)(2).

§ 1207.42 Retention and access requirements for records.

(a) *Applicability.* (1) This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees which are:

(i) Required to be maintained by the terms of this part, program regulations or the grant agreement, or

(ii) Otherwise reasonably considered as pertinent to program regulations or the grant agreement.

(2) This section does not apply to records maintained by contractors or subcontractors. For a requirement to place a provision concerning records in certain kinds of contracts, see § 1207.36(i)(10).

(b) *Length of retention period.* (1) Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section.

(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(3) To avoid duplicate recordkeeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The awarding agency will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the Federal agency, the 3-year retention requirement is not applicable to the grantee or subgrantee.

(c) *Starting date of retention period*—(1) *General.* When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention period starts on the day the report would have been due.

(2) *Real property and equipment records.* The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.

(3) *Records for income transactions after grant or subgrant support.* In some cases grantees must report income after the period of grant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.

(4) *Indirect cost rate proposals, cost allocations plans, etc.* This paragraph

applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(i) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(ii) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan, or computation and its supporting records starts from end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(d) *Substitution of microfilm.* Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(e) *Access to records*—(1) *Records of grantees and subgrantees.* The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

(2) *Expiration of right of access.* The rights of access in this section must not be limited to the required retention period but shall last as long as the records are retained.

(f) *Restrictions on public access.* The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to records Unless required by Federal, State, or local law, grantees and subgrantees are not required to permit public access to their records.

§ 1207.43 Enforcement.

(a) *Remedies for noncompliance.* If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,

(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,

(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,

(4) Withhold further awards for the program, or

(5) Take other remedies that may be legally available.

(b) *Hearings, appeals.* In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to "Debarment and Suspension" under E.O. 12549 (see § 1207.35).

§ 1207.44 Termination for convenience.

Except as provided in § 1207.43 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either § 1207.43 or paragraph (a) of this section.

Subpart D—After-The-Grant Requirements

§ 1207.50 Closeout.

(a) *General.* The Federal agency will close out the award when it determines that all applicable administrative actions and all required work of the grant has been completed.

(b) *Reports.* Within 90 days after the expiration or termination of the grant, the grantee must submit all financial, performance, and other reports required as a condition of the grant. Upon request by the grantee, Federal agencies may extend this timeframe. These may include but are not limited to:

(1) *Final performance or progress report.*

(2) *Financial Status Report (SF 269) or Outlay Report and Request for Reimbursement for Construction Programs (SF-271) (as applicable).*

(3) *Final request for payment (SF-270) (if applicable).*

(4) *Invention disclosure (if applicable).*

(5) *Federally-owned property report:* In accordance with § 1207.32(f), a grantee must submit an inventory of all federally owned property (as distinct from property acquired with grant funds) for which it is accountable and request disposition instructions from the Federal agency of property no longer needed.

(c) *Cost adjustment.* The Federal agency will, within 90 days after receipt of reports in paragraph (b) of this section, make upward or downward adjustments to the allowable costs.

(d) *Cash adjustments.* (1) The Federal agency will make prompt payment to the grantee for allowable reimbursable costs.

(2) The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

§ 1207.51 Later disallowances and adjustments.

The closeout of a grant does not affect:

(a) The Federal agency's right to disallow costs and recover funds on the basis of a later audit or other review;

(b) The grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions;

(c) Records retention as required in § 1207.42;

(d) Property management requirements in §§ 1207.31 and 1207.32; and

(e) Audit requirements in § 1207.26.

§ 1207.52 Collection of amounts due.

(a) Any funds paid to a grantee in excess of the amount to which the grantee is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government. If not paid within a reasonable period after demand, the Federal agency may reduce the debt by:

(1) Making an adminstrative offset against other requests for reimbursements,

(2) Withholding advance payments otherwise due to the grantee, or

(3) Other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, the Federal agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR Ch. II). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

Subpart E—Entitlement [Reserved]

PART 1208—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Sec.
1208.101 Purpose.
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AUTHORITY: 29 U.S.C. 794.

SOURCE: 53 FR 25884, 25885, July 8, 1988, unless otherwise noted.

§ 1208.101 Purpose.

The purpose of this regulation is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 1208.102 Application.

This regulation (§§ 1208.101-1208.170) applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

§ 1208.103 Definitions.

For purposes of this regulation, the term—

"Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

"Complete complaint" means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"Historic preservation programs" means programs conducted by the agency that have preservation of historic properties as a primary purpose.

"Historic properties" means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

"Individual with handicaps" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(1) "Physical or mental impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

"Qualified individual with handicaps" means—

(1) With respect to preschool, elementary, or secondary education services provided by the agency, an individual with handicaps who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency;

(2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(3) With respect to any other program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(4) "Qualified handicapped person" as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this regulation by § 1208.140.

"Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, 92 Stat. 2955); and the Rehabilitation Act Amendments of 1986 (Pub. L. 99-506, 100 Stat. 1810). As used in this regulation, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

"Substantial impairment" means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§§ 1208.104—1208.109 [Reserved]

§ 1208.110 Self-evaluation.

(a) The agency shall, by September 6, 1989, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this regulation and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

§ 1208.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this regulation and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 1208.112—1208.129 [Reserved]

§ 1208.130 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards;

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this regulation.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this regulation.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§§ 1208.131—1208.139 [Reserved]

§ 1208.140 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subject to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§ 1208.141—1208.148 [Reserved]

§ 1208.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 1208.150, no qualified individual with handicaps shall, because the agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 1208.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with handicaps;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would

result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 1208.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods*—(1) *General.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(2) *Historic preservation programs.* In meeting the requirements of § 1208.150(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to individuals with handicaps. In cases where a physical alteration to an historic property is not required because of § 1208.150(a) (2) or (3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide individuals with handicaps into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by November 7, 1988, except that where structural changes in facilities are undertaken, such changes shall be made by September 6, 1991, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by March 6, 1989, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 1208.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151-4157), as established in 41 CFR 101-19.600 to 101-19.607, apply to buildings covered by this section.

§§ 1208.152—1208.159 [Reserved]

§ 1208.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with handicaps.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 1208.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 1208.161—1208.169 [Reserved]

§ 1208.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs and activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Assistant Archivist for Management and Administration shall be responsible for coordinating implementation of this section. Compliants may be sent to National Archives and Records Administration (NA), Washington, DC 20408.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), is not readily accessible to and usable by individuals with handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § 1208.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[53 FR 25884, 25885, July 8, 1988, as amended at 53 FR 25884, July 8, 1988]

§§ 1208.171—1208.999 [Reserved]

PART 1209—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

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APPENDIX A TO PART 1209—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS—PRIMARY COVERED TRANSACTIONS
APPENDIX B TO PART 1209—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS
APPENDIX C TO PART 1209—CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

AUTHORITY: E.O. 12549; Sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq); 44 U.S.C. 2104(a).

SOURCE: 53 FR 19193, 19194, 19204, May 26, 1988, unless otherwise noted.

CROSS REFERENCE: See also Office of Management and Budget notice published at 55 FR 21679, May 25, 1990.

Subpart A—General

§ 1209.100 Purpose.

(a) Executive Order 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a governmentwide system for nonprocurement debarment and suspension. A person who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. Debarment or suspension of a participant in a program by one agency shall have governmentwide effect.

(b) These regulations implement section 3 of Executive Order 12549 and the guidelines promulgated by the Office of Management and Budget under section 6 of the Executive order by:

(1) Prescribing the programs and activities that are covered by the governmentwide system;

(2) Prescribing the governmentwide criteria and governmentwide minimum due process procedures that each agency shall use;

(3) Providing for the listing of debarred and suspended participants, participants declared ineligible (see definition of "ineligible" in § 1209.105(i)), and participants who have voluntarily excluded themselves from participation in covered transactions

(4) Setting forth the consequences of a debarment, suspension, determination of ineligibility, or voluntary exclusion; and

(5) Offering such other guidance as necessary for the effective implementation and administration of the governmentwide system.

(c) Although these regulations cover the listing of ineligible participants and the effect of such listing, they do not prescribe policies and procedures governing declarations of ineligibility.

§ 1209.105 Definitions.

(a) *Adequate evidence.* Information sufficient to support the reasonable belief that a particular act or omission has occurred.

(b) *Affiliate.* Persons are affiliates of each another if, directly or indirectly, either one controls or has the power to control the other, or, a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a person which has the same or similar management, ownership, or principal employees as the suspended, debarred, ineligible, or voluntarily excluded person.

(c) *Agency.* Any executive department, military department or defense agency or other agency of the executive branch, excluding the independent regulatory agencies.

(d) *Civil judgment.* The disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement, stipulation, or otherwise creating a civil liability for the wrongful acts complained of; or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801-12).

(e) *Conviction.* A judgment of conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.

(f) *Debarment.* An action taken by a debarring official in accordance with these regulations to exclude a person from participating in covered transactions. A person so excluded is "debarred."

(g) *Debarring official.* An official authorized to impose debarment. The debarring official is either:

(1) The agency head, or

(2) An official designated by the agency head.

(h) *Indictment.* Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

(i) *Ineligible.* Excluded from participation in Federal nonprocurement programs pursuant to a determination of ineligibility under statutory, executive order, or regulatory authority, other than Executive Order 12549 and its agency implementing regulations; for exemple, excluded pursuant to the Davis-Bacon Act and its implementing regulations, the equal employment opportunity acts and executive orders, or the environmental protection acts and executive orders. A person is ineligible where the determination of ineligibility affects such person's eligibility to participate in more than one covered transaction.

(j) *Legal proceedings.* Any criminal proceeding or any civil judicial proceeding to which the Federal Government or a State of local government or quasi-governmental authority is a party. The term includes appeals from such proceedings.

(k) *Nonprocurement List.* The portion of the *List of Parties Excluded from Federal Procurement or Nonprocurement Programs* complied, maintained and distributed by the General Services Administration (GSA) containing the names and other information about persons who have been debarred, suspended, or voluntarily excluded under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(l) *Notice.* A written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, its agent for service of process, or any partner, officer, director, owner, or joint venturer of the party. Notice, if undeliverable, shall be considered to have been received by the addressee five days after being properly sent to the last address known by the agency.

(m) *Participant.* Any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction. This term also includes any person who acts on behalf of or is authorized to commit a participant in a covered transaction as an agent or representative of another participant.

(n) *Person.* Any individual, corporation, partnership, association, unit of government or legal entity, however organized, except: foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities.

(o) *Preponderance of the evidence.* Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

(p) *Principal.* Officer, director, owner, partner, key employee, or other person within a participant with primary management or supervisory responsibilities; or a person who has a critical influence on or substantive control over a covered transaction, whether or not employed by the participant. Persons who have a critical influence on or substantive control over a covered transaction are:

(1) Principal investigators.

(q) *Proposal.* A solicited or unsolicited bid, application, request, invitation to consider or similar communication by or on behalf of a person seeking to participate or to receive a benefit, directly or indirectly, in or under a covered transaction.

(r) *Respondent.* A person against whom a debarment or suspension action has been initiated.

(s) *State.* Any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency of a State, exclusive of institutions of higher education, hospitals, and units of local government. A State instrumentality will be considered part of the State government if it has a written determination from a State government that such State considers that instrumentality to be an agency of the State government.

(t) *Suspending official.* An official authorized to impose suspension. The suspending official is either:

(1) The agency head, or

(2) An official designated by the agency head.

(u) *Suspension.* An action taken by a suspending official in accordance with these regulations that immediately excludes a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal, debarment, or Program Fraud Civil Remedies Act proceedings as may ensue. A person so excluded is "suspended."

(v) *Voluntary exclusion or voluntarily excluded.* A status of nonparticipation or limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

(w) *NARA.* National Archives and Records Administration.

§ 1209.110 Coverage.

(a) These regulations apply to all persons who have participated, are currently participating or may reasonably be expected to participate in transactions under Federal nonprocurement programs. For purposes of these regulations such transactions will be referred to as "covered transactions."

(1) *Covered transaction.* For purposes of these regulations, a covered transaction is a primary covered transaction or a lower tier covered transaction. Covered transactions at any tier need not involve the transfer of Federal funds.

(i) *Primary covered transaction.* Except as noted in paragraph (a)(2) of this section, a primary covered transaction is any nonprocurement transaction between an agency and a person, regardless of type, including: grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, donation agreements and any other nonprocurement transactions between a Federal agency and a person. Primary covered transactions also include those transactions specially designated by the U.S. Department of Housing and Urban Development in such agency's regulations governing debarment and suspension.

(ii) *Lower tier covered transaction.* A lower tier covered transaction is:

(A) Any transaction between a participant and a person other than a procurement contract for goods or services, regardless of type, under a primary covered transaction.

(B) Any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g) (currently $25,000) under a primary covered transaction.

(C) Any procurement contract for goods or services between a participant and a person under a covered transaction, regardless of amount, under which that person will have a critical influence on or substantive control over that covered transaction. Such persons are:

(*1*) Principal investigators.

(*2*) Providers of federally-required audit services.

(2) *Exceptions.* The following transactions are not covered:

(i) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(ii) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, entities consisting wholly or partially of foreign governments or foreign governmental entities;

(iii) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(iv) Federal employment;

(v) Transactions pursuant to national or agency-recognized emergencies or disasters;

(vi) Incidental benefits derived from ordinary governmental operations; and

(vii) Other transactions where the application of these regulations would be prohibited by law.

(b) *Relationship to other sections.* This section describes the types of transactions to which a debarment or suspension under the regulations will apply. Subpart B, "Effect of Action," § 1209.200, "Debarment or suspension," sets forth the consequences of a debarment or suspension. Those consequences would obtain only with respect to participants and principals in the covered transactions and activities described in § 1209.110(a). Sections 1209.325, "Scope of debarment," and 1209.420, "Scope of suspension," govern the extent to which a specific participant or organizational elements of a participant would be automatically included within a debarment or suspension action, and the conditions under which affiliates or persons associated with a participant may also be brought within the scope of the action.

(c) *Relationship to Federal procurement activities.* Debarment and suspension of Federal procurement contractors and subcontractors under Federal procurement contracts are covered by the Federal Acquisition Regulation (FAR), 48 CFR Subpart 9.4.

§ 1209.115 Policy.

(a) In order to protect the public interest, it is the policy of the Federal Government to conduct business only with responsible persons. Debarment and suspension are discretionary actions that, taken in accordance with Executive Order 12549 and these regulations, are appropriate means to implement this policy.

(b) Debarment and suspension are serious actions which shall be used only in the public interest and for the Federal Government's protection and not for purposes of punishment. Agencies may impose debarment or suspension for the causes and in accordance with the procedures set forth in these regulations.

(c) When more than one agency has an interest in the proposed debarment or suspension of a person, consideration shall be given to designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their debarment or suspension actions.

Subpart B—Effect of Action

§ 1209.200 Debarment or suspension.

(a) *Primary covered transactions.* Except to the extent prohibited by law, persons who are debarred or suspended shall be excluded from primary covered transactions as either participants or principals throughout the executive branch of the Federal Government for the period of their debarment or suspension. Accordingly, no agency shall enter into primary covered transactions with such debarred or suspended persons during such period, except as permitted pursuant to § 1209.215.

(b) *Loser tier covered transactions.* Except to the extent prohibited by law, persons who have been debarred or suspended shall be excluded from participating as either participants or principals in all lower tier covered transactions (see § 1209.110(a)(1)(ii)) for the period of their debarment or suspension.

(c) *Exceptions.* Debarment or suspension does not affect a person's eligibility for:

(1) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(2) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities;

(3) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(4) Federal employment;

(5) Transactions pursuant to national or agency-recognized emergencies or disasters;

(6) Incidental benefits derived from ordinary governmental operations; and

(7) Other transactions where the application of these regulations would be prohibited by law.

§ 1209.205 Ineligible persons.

Persons who are ineligible, as defined in § 1209.105(i), are excluded in accordance with the applicable statutory, executive order, or regulatory authority.

§ 1209.210 Voluntary exclusion.

Persons who accept voluntary exclusions under § 1209.315 are excluded in accordance with the terms of their settlements. NARA shall, and participants may, contact the original action agency to ascertain the extent of the exclusion.

§ 1209.215 Exception provision.

NARA may grant an exception permitting a debarred, suspended, or voluntarily excluded person to participate in a particular covered transaction upon a written determination by the agency head or an authorized designee stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549 and § 1209.200 of this rule. However, in accordance with the President's stated intention in the Executive order, exceptions shall be granted only infrequently. Exceptions shall be reported in accordance with § 1209.505(a).

§ 1209.220 Continuation of covered transactions.

(a) Notwithstanding the debarment, suspension, determination of ineligibility, or voluntary exclusion of any person by an agency, agencies and participants may continue covered transactions in existence at the time the person was debarred, suspended, declared ineligible, or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(b) Agencies and participants shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, ineligible, or voluntarily excluded, except as provided in § 1209.215.

§ 1209.225 Failure to adhere to restrictions.

Except as permitted under § 1209.215 or § 1209.220 of these regulations, a participant shall not knowingly do business under a covered transaction with a person who is debarred or suspended, or with a person who is ineligible for or voluntarily excluded from that covered transaction. Violation of this restriction may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies, as appropriate. A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction (see Appendix B), unless it knows that the certification is erroneous. An agency has the burden of proof that such participant did knowingly do business with such a person.

Subpart C—Debarment

§ 1209.300 General.

The debarring official may debar a person for any of the causes in § 1209.305, using procedures established in §§ 1209.310 through 1209.314. The existence of a cause for debarment, however, does not necessarily require that the person be debarred; the seriousness of the person's acts or omissions and any mitigating factors shall be considered in making any debarment decision.

§ 1209.305 Causes for debarment.

Debarment may be imposed in accordance with the provisions of §§ 1209.300 through 1209.314 for:

(a) Conviction of or civil judgment for:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person.

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as:

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, the effective date of these regulations, or a procurement debarment by any Federal agency taken pursuant to 48 CFR Subpart 9.4;

(2) Knowingly doing business with a debarred, suspended, ineligible, or voluntarily excluded person, in connection with a covered transaction, except as permitted in § 1209.215 or § 1209.220;

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted;

(4) Violation of a material provision of a voluntary exclusion agreement entered into under § 1209.315 or of any settlement of a debarment or suspension action; or

(5) Violation of any requirement of Subpart F of this part, relating to providing a drug-free workplace, as set forth in § 1209.615 of this part.

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a person.

[53 FR 19193, 19194, 19204, May 26, 1988, as amended at 54 FR 4950, 4961, Jan. 31, 1989]

§ 1209.310 Procedures.

NARA shall process debarment actions as informally as practicable, consistent with the principles of fundamental fairness, using the procedures in §§ 1209.311 through 1209.314.

§ 1209.311 Investigation and referral.

Information concerning the existence of a cause for debarment from any source shall be promptly reported, investigated, and referred, when appropriate, to the debarring official for consideration. After consideration, the debarring official may issue a notice of proposed debarment.

§ 1209.312 Notice of proposed debarment.

A debarment proceeding shall be initiated by notice to the respondent advising:

(a) That debarment is being considered;

(b) Of the reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based;

(c) Of the cause(s) relied upon under § 1209.305 for proposing debarment;

(d) Of the provisions of § 1209.311 through § 1209.314, and any other NARA procedures, if applicable, governing debarment decisionmaking; and

(e) Of the potential effect of a debarment.

§ 1209.313 Opportunity to contest proposed debarment.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of proposed debarment, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(b) *Additional proceedings as to disputed material facts.* (1) In actions not based upon a conviction or civil judgment, if the debarring official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the proposed debarment, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents.

(2) A transcribed record of any additional proceedings shall be made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

§ 1209.314 Debarring official's decision.

(a) *No additional proceedings necessary.* In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the debarring official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(3) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(c)(1) *Standard of proof.* In any debarment action, the cause for debarment must be established by a preponderance of the evidence. Where the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

(2) *Burden of proof.* The burden of proof is on the agency proposing debarment.

(d) *Notice of debarring official's decision.* (1) If the debarring official decides to impose debarment, the respondent shall be given prompt notice:

(i) Referring to the notice of proposed debarment;

(ii) Specifying the reasons for debarment;

(iii) Stating the period of debarment, including effective dates; and

(iv) Advising that the debarment is effective for covered transactions throughout the executive branch of the Federal Government unless an agency head or an authorized designee makes the determination referred to in § 1209.215.

(2) If the debarring official decides not to impose debarment, the respondent shall be given prompt notice of that decision. A decision not to impose

debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.

§ 1209.315 Settlement and voluntary exclusion.

(a) When in the best interest of the Government, NARA may, at any time, settle a debarment or suspension action.

(b) If a participant and the agency agree to a voluntary exclusion of the participant, such voluntary exclusion shall be entered on the Nonprocurement List (see Subpart E).

§ 1209.320 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s). If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(1) Debarment for causes other than those related to a violation of the requirements of Subpart F of this part generally should not exceed three years. Where circumstances warrant, a longer period of debarment may be imposed.

(2) In the case of a debarment for a violation of the requirements of Subpart F of this part (*see* § 1209.305(c)(5)), the period of debarment shall not exceed five years.

(b) The debarring official may extend an existing debarment for an additional period, if that official determines that an extension is necessary to protect the public interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures of §§ 1209.311 through 1209.314 shall be followed to extend the debarment.

(c) The respondent may request the debarring official to reverse the debarment decision or to reduce the period or scope of debarment. Such a request shall be in writing and supported by documentation. The debarring official may grant such a request for reasons including, but not limited to:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or civil judgment upon which the debarment was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the debarring official deems appropriate.

[53 FR 19193, 19194, 19204, May 26, 1988, as amended at 54 FR 4950, 4961, Jan. 31, 1989]

§ 1209.325 Scope of debarment.

(a) *Scope in general.* (1) Debarment of a person under these regulations constitutes debarment of all its divisions and other organizational elements from all covered transactions, unless the debarment decision is limited by its terms to one or more specifically identified individuals, divisions or other organizational elements or to specific types of transactions.

(2) The debarment action may include any affiliate of the participant that is specifically named and given notice of the proposed debarment and an opportunity to respond (see §§ 1209.311 through 1209.314).

(b) *Imputing conduct.* For purposes of determining the scope of debarment, conduct may be imputed as follows:

(1) *Conduct imputed to participant.* The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(2) *Conduct imputed to individuals associated with participant.* The fraudulent, criminal, or other seriously improper conduct of a participant may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct.

(3) *Conduct of one participant imputed to other participants in a joint venture.* The fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement or with the knowledge, approval, or acquiescence of these participants. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

Subpart D—Suspension

§ 1209.400 General.

(a) The suspending official may suspend a person for any of the causes in § 1209.405 using procedures established in §§ 1209.410 through 1209.413.

(b) Suspension is a serious action to be imposed only when:

(1) There exists adequate evidence of one or more of the causes set out in § 1209.405, and

(2) Immediate action is necessary to protect the public interest.

(c) In assessing the adequacy of the evidence, the agency should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as grants, cooperative agreements, loan authorizations, and contracts.

§ 1209.405 Causes for suspension.

(a) Suspension may be imposed in accordance with the provisions of §§ 1209.400 through 1209.413 upon adequate evidence:

(1) To suspect the commission of an offense listed in § 1209.305(a); or

(2) That a cause for debarment under § 1209.305 may exist.

(b) Indictment shall constitute adequate evidence for purposes of suspension actions.

§ 1209.410 Procedures.

(a) *Investigation and referral.* Information concerning the existence of a cause for suspension from any source shall be promptly reported, investigated, and referred, when appropriate, to the suspending official for consideration. After consideration, the suspending official may issue a notice of suspension.

(b) *Decisionmaking process.* NARA shall process suspension actions as informally as practicable, consistent with principles of fundamental fairness, using the procedures in § 1209.411 through § 1209.413.

§ 1209.411 Notice of suspension.

When a respondent is suspended, notice shall immediately be given:

(a) That suspension has been imposed;

(b) That the suspension is based on an indictment, conviction, or other adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further Federal Government dealings with the respondent;

(c) Describing any such irregularities in terms sufficient to put the respondent on notice without disclosing the Federal Government's evidence;

(d) Of the cause(s) relied upon under § 1209.405 for imposing suspension;

(e) That the suspension is for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings;

(f) Of the provisions of § 1209.411 through § 1209.413 and any other NARA procedures, if applicable, governing suspension decisionmaking; and

(g) Of the effect of the suspension.

§ 1209.412 Opportunity to contest suspension.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of suspension, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(b) *Additional proceedings as to disputed material facts.* (1) If the suspending official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the suspension, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents, unless:

(i) The action is based on an indictment, conviction or civil judgment, or

(ii) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(2) A transcribed record of any additional proceedings shall be prepared and made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

§ 1209.413 Suspending official's decision.

The suspending official may modify or terminate the suspension (for example, see § 1209.320(c) for reasons for reducing the period or scope of debarment) or may leave it in force. However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency or debarment by any agency. The decision shall be rendered in accordance with the following provisions:

(a) *No additional proceedings necessary.* In actions: based on an indictment, conviction, or civil judgment; in which there is no genuine dispute over material facts; or in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the suspending official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary or capricious or clearly erroneous.

(c) *Notice of suspending official's decision.* Prompt written notice of the suspending official's decision shall be sent to the respondent.

§ 1209.415 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings, unless terminated sooner by the suspending official or as provided in paragraph (b) of this section.

(b) If legal or administrative proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General or United States Attorney requests its extension in writing, in which case it may be extended for an additional six months. In no event may a suspension extend beyond 18 months, unless such proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of an impending termination of a suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

§ 1209.420 Scope of suspension.

The scope of a suspension is the same as the scope of a debarment (see

§ 1209.325), except that the procedures of §§ 1209.410 through 1209.413 shall be used in imposing a suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

§ 1209.500 GSA responsibilities.

(a) In accordance with the OMB guidelines, GSA shall compile, maintain, and distribute a list of all persons who have been debarred, suspended, or voluntarily excluded by agencies under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(b) At a minimum, this list shall indicate:

(1) The names and addresses of all debarred, suspended, ineligible, and voluntarily excluded persons, in alphabetical order, with cross-references when more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for each listing; and

(6) The agency and name and telephone number of the agency point of contact for the action.

§ 1209.505 NARA responsibilities.

(a) The agency shall provide GSA with current information concerning debarments, suspension, determinations of ineligibility, and voluntary exclusions it has taken. Until February 18, 1989, the agency shall also provide GSA and OMB with information concerning all transactions in which NARA has granted exceptions under § 1209.215 permitting participation by debarred, suspended, or voluntarily excluded persons.

(b) Unless an alternative schedule is agreed to by GSA, the agency shall advise GSA of the information set forth in § 1209.500(b) and of the exceptions granted under § 1209.215 within five working days after taking such actions.

(c) The agency shall direct inquiries concerning listed persons to the agency that took the action.

(d) Agency officials shall check the Nonprocurement List before entering covered transactions to determine whether a participant in a primary transaction is debarred, suspended, ineligible, or voluntarily excluded (Tel. #).

(e) Agency officials shall check the Nonprocurement List before approving principals or lower tier participants where agency approval of the principal or lower tier participant is required under the terms of the transaction, to determine whether such principals or participants are debarred, suspended, ineligible, or voluntarily excluded.

§ 1209.510 Participants' responsibilities.

(a) *Certification by participants in primary covered transactions.* Each participant shall submit the certification in Appendix A to this part for it and its principals at the time the participant submits its proposal in connection with a primary covered transaction, except that States need only complete such certification as to their principals. Participants may decide the method and frequency by which they determine the eligibility of their principals. In addition, each participant may, but is not required to, check the Nonprocurement List for its principals (Tel. #). Adverse information on the certification will not necessarily result in denial of participation. However, the certification, and any additional information pertaining to the certification submitted by the participant, shall be considered in the administration of covered transactions.

(b) *Certification by participants in lower tier covered transactions.* (1) Each participant shall require participants in lower tier covered transactions to include the certification in Appendix B to this part for it and its principals in any proposal submitted in connection with such lower tier covered transactions.

(2) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction by any Federal agency, unless it knows that the certification is erroneous. Participants may decide the method and frequency by which

they determine the eligiblity of their principals. In addition, a participant may, but is not required to, check the Nonprocurement List for its principals and for participants (Tel.).

(c) *Changed circumstances regarding certification.* A participant shall provide immediate written notice to NARA if at any time the participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Participants in lower tier covered transactions shall provide the same updated notice to the participant to which it submitted its proposals.

Subpart F—Drug-Free Workplace Requirements (Grants)

SOURCE: 55 FR 21688, 21700, May 25, 1990, unless otherwise noted.

EFFECTIVE DATE NOTE: At 55 FR 21688, 21700, May 25, 1990, subpart F to part 1209 was revised, effective July 24, 1990, except for the certification requirement of § 1209.630 (c) and (d) for States and State agencies which is effective June 25, 1990. For the convenience of the user, the superseded text follows the new text.

§ 1209.600 Purpose.

(a) The purpose of this subpart is to carry out the Drug-Free Workplace Act of 1988 by requiring that—

(1) A grantee, other than an individual, shall certify to the agency that it will provide a drug-free workplace;

(2) A grantee who is an individual shall certify to the agency that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

(b) Requirements implementing the Drug-Free Workplace Act of 1988 for contractors with the agency are found at 48 CFR subparts 9.4, 23.5, and 52.2.

§ 1209.605 Definitions.

(a) Except as amended in this section, the definitions of § 1209.105 apply to this subpart.

(b) For purposes of this subpart—

(1) *Controlled substance* means a controlled substance in schedules I through V of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1308.11 through 1308.15;

(2) *Conviction* means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

(3) *Criminal drug statute* means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

(4) *Drug-free workplace* means a site for the performance of work done in connection with a specific grant at which employees of the grantee are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance;

(5) *Employee* means the employee of a grantee directly engaged in the performance of work under the grant, including:

(i) All *direct charge* employees;

(ii) All *indirect charge* employees, unless their impact or involvement is insignificant to the performance of the grant; and,

(iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll.

This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the payroll; or employees of subrecipients or subcontractors in covered workplaces);

(6) *Federal agency* or *agency* means any United States executive department, military department, government corporation, government controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency;

(7) *Grant* means an award of financial assistance, including a cooperative agreement, in the form of money, or property in lieu of money, by a Federal agency directly to a grantee. The

term grant includes block grant and entitlement grant programs, whether or not exempted from coverage under the grants management governmentwide common rule on uniform administrative requirements for grants and cooperative agreements. The term does not include technical assistance that provides services instead of money, or other assistance in the form of loans, loan guarantees, interest subsidies, insurance, or direct appropriations; or any veterans' benefits to individuals, i.e., any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States;

(8) *Grantee* means a person who applies for or receives a grant directly from a Federal agency (except another Federal agency);

(9) *Individual* means a natural person;

(10) *State* means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency of a State, exclusive of institutions of higher education, hospitals, and units of local government. A State instrumentality will be considered part of the State government if it has a written determination from a State government that such State considers the instrumentality to be an agency of the State government.

§ 1209.610 Coverage.

(a) This subpart applies to any grantee of the agency.

(b) This subpart applies to any grant, except where application of this subpart would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government. A determination of such inconsistency may be made only by the agency head or his/her designee.

(c) The provisions of subparts A, B, C, D and E of this part apply to matters covered by this subpart, except where specifically modified by this subpart. In the event of any conflict between provisions of this subpart and other provisions of this part, the provisions of this subpart are deemed to control with respect to the implementation of drug-free workplace requirements concerning grants.

§ 1209.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.

A grantee shall be deemed in violation of the requirements of this subpart if the agency head or his or her official designee determines, in writing, that—

(a) The grantee has made a false certification under § 1209.630;

(b) With respect to a grantee other than an individual—

(1) The grantee has violated the certification by failing to carry out the requirements of paragraphs (A)(a)-(g) and/or (B) of the certification (Alternate I to Appendix C) or

(2) Such a number of employees of the grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the grantee has failed to make a good faith effort to provide a drug-free workplace.

(c) With respect to a grantee who is an individual—

(1) The grantee has violated the certification by failing to carry out its requirements (Alternate II to Appendix C); or

(2) The grantee is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity.

§ 1209.620 Effect of violation.

(a) In the event of a violation of this subpart as provided in § 1209.615, and in accordance with applicable law, the grantee shall be subject to one or more of the following actions:

(1) Suspension of payments under the grant;

(2) Suspension or termination of the grant; and

(3) Suspension or debarment of the grantee under the provisions of this part.

(b) Upon issuance of any final decision under this part requiring debarment of a grantee, the debarred grantee shall be ineligible for award of any grant from any Federal agency for a period specified in the decision, not to exceed five years (*see* § 1209.320(a)(2) of this part).

§ 1209.625 Exception provision.

The agency head may waive with respect to a particular grant, in writing, a suspension of payments under a grant, suspension or termination of a grant, or suspension or debarment of a grantee if the agency head determines that such a waiver would be in the public interest. This exception authority cannot be delegated to any other official.

§ 1209.630 Certification requirements and procedures.

(a)(1) As a prior condition of being awarded a grant, each grantee shall make the appropriate certification to the Federal agency providing the grant, as provided in Appendix C to this part.

(2) Grantees are not required to make a certification in order to continue receiving funds under a grant awarded before March 18, 1989, or under a no-cost time extension of such a grant. However, the grantee shall make a one-time drug-free workplace certification for a non-automatic continuation of such a grant made on or after March 18, 1989.

(b) Except as provided in this section, all grantees shall make the required certification for each grant. For mandatory formula grants and entitlements that have no application process, grantees shall submit a one-time certification in order to continue receiving awards.

(c) A grantee that is a State may elect to make one certification in each Federal fiscal year. States that previously submitted an annual certification are not required to make a certification for Fiscal Year 1990 until June 30, 1990. Except as provided in paragraph (d) of this section, this certification shall cover all grants to all State agencies from any Federal agency. The State shall retain the original of this statewide certification in its Governor's office and, prior to grant award, shall ensure that a copy is submitted individually with respect to each grant, unless the Federal agency has designated a central location for submission.

(d)(1) The Governor of a State may exclude certain State agencies from the statewide certification and authorize these agencies to submit their own certifications to Federal agencies. The statewide certification shall name any State agencies so excluded.

(2) A State agency to which the statewide certification does not apply, or a State agency in a State that does not have a statewide certification, may elect to make one certification in each Federal fiscal year. State agencies that previously submitted a State agency certification are not required to make a certification for Fiscal Year 1990 until June 30, 1990. The State agency shall retain the original of this State agency-wide certification in its central office and, prior to grant award, shall ensure that a copy is submitted individually with respect to each grant, unless the Federal agency designates a central location for submission.

(3) When the work of a grant is done by more than one State agency, the certification of the State agency directly receiving the grant shall be deemed to certify compliance for all workplaces, including those located in other State agencies.

(e)(1) For a grant of less than 30 days performance duration, grantees shall have this policy statement and program in place as soon as possible, but in any case by a date prior to the date on which performance is expected to be completed.

(2) For a grant of 30 days or more performance duration, grantees shall have this policy statement and program in place within 30 days after award.

(3) Where extraordinary circumstances warrant for a specific grant, the grant officer may determine a different date on which the policy statement and program shall be in place.

§ 1209.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

(a) When a grantee other than an individual is notified that an employee has been convicted for a violation of a criminal drug statute occurring in the workplace, it shall take the following actions:

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(1) Within 10 calendar days of receiving notice of the conviction, the grantee shall provide written notice, including the convicted employee's position title, to every grant officer, or other designee on whose grant activity the convicted employee was working, unless a Federal agency has designated a central point for the receipt of such notifications. Notification shall include the identification number(s) for each of the Federal agency's affected grants.

(2) Within 30 calendar days of receiving notice of the conviction, the grantee shall do the following with respect to the employee who was convicted.

(i) Take appropriate personnel action against the employee, up to and including termination, consistent with requirements of the Rehabilitation Act of 1973, as amended; or

(ii) Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

(b) A grantee who is an individual who is convicted for a violation of a criminal drug statute occurring during the conduct of any grant activity shall report the conviction, in writing, within 10 calendar days, to his or her Federal agency grant officer, or other designee, unless the Federal agency has designated a central point for the receipt of such notices. Notification shall include the identification number(s) for each of the Federal agency's affected grants.

(Approved by the Office of Management and Budget under control number 0991-0002)

EFFECTIVE DATE NOTE: At 55 FR 21688, 21700, May 25, 1990, subpart F to part 1209 was revised, effective July 24, 1990, except for the certification requirement of § 1209.630 (c) and (d) for States and State agencies which is effective June 25, 1990. For the convenience of the user, the superseded text of subpart F follows.

Subpart F—Drug-Free Workplace Requirements (Grants)

SOURCE: 54 FR 4950, 4961, Jan. 31, 1989, unless otherwise noted.

§ 1209.600 Purpose.

(a) The purpose of this subpart is to carry out the Drug-Free Workplace Act of 1988 by requiring that—

(1) A grantee, other than an individual, shall certify to the agency that it will provide a drug-free workplace;

(2) A grantee who is an individual shall certify to the agency that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

(b) Requirements implementing the Drug-Free Workplace Act of 1988 for contractors with the agency are found at 48 CFR Subparts 9.4, 23.5, and 52.2.

§ 1209.605 Definitions.

(a) Except as amended in this section, the definitions of § 1209.105 apply to this subpart.

(b) For purposes of this subpart—

(1) "Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1308.11 through 1308.15.

(2) "Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

(3) "Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use or possession of any controlled substance;

(4) "Drug-free workplace" means a site for the performance of work done in connection with a specific grant at which employees of the grantee are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance;

(5) "Employee" means the employee of a grantee directly engaged in the performance of work pursuant to the provisions of the grant;

(6) "Federal agency" or "agency" means any United States executive department, military department, government corporation, government controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency;

(7) "Grant" means an award of financial assistance, including a cooperative agreement, in the form of money, or property in lieu of money, by a Federal agency directly to a grantee. The term grant includes block grant and entitlement grant programs,

whether or not exempted from coverage under the grants management governmentwide regulation ("Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"). The term does not include technical assistance which provides services instead of money, or other assistance in the form of loans, loan guarantees, interest subsidies, insurance, or direct appropriations; or any veterans' benefits to individuals, i.e., any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States;

(8) "Grantee" means a person who applies for or receives a grant directly from a Federal agency;

(9) "Individual" means a natural person.

§ 1209.610 Coverage.

(a) This subpart applies to any grantee of the agency.

(b) This subpart applies to any grant, except where application of this subpart would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government.

(c) The provisions of Subparts A, B, C, D and E of this part apply to matters covered by this subpart, except where specifically modified by this subpart. In the event of any conflict between provisions of this subpart and other provisions of this part, the provisions of this subpart are deemed to control with respect to the implementation of drug-free workplace requirements concerning grants.

§ 1209.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.

A grantee shall be deemed in violation of the requirements of this subpart if the agency head or his or her official designee determines, in writing, that—

(a) The grantee has made a false certificaiton under § 1209.630;

(b) The grantee has violated the certification by failing to carry out the requirements of subparagraphs (A.)(a)-(g) of the certification for grantees other than individuals (Alternate I to Appendix C) or by failing to carry out the requirements of the certification for grantees who are individuals (Alternate II to Appendix C); or

(c) Such a number of employees of the grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the grantee has failed to make a good faith effort to provide a drug-free workplace.

§ 1209.620 Effect of violation.

(a) In the event of a violation of this subpart as provided in § 1209.615, and in accordance with applicable law, the grantee shall be subject to one or more of the following actions:

(1) Suspension of payments under the grant;

(2) Suspension or termination of the grant; and

(3) Suspension or debarment of the grantee under the provisions of this part.

(b) Upon issuance of any final decision under this part requiring debarment of a grantee, the debarred grantee shall be ineligible for award of any grant from any Federal agency for a period specified in the decision, not to exceed five years (*see* § 1209.320(a)(2) of this part).

§ 1209.625 Exception provision.

The agency head may waive with respect to a particular grant, in writing, a suspension of payments under a grant, suspension or termination of a grant, or suspension or debarment of a grantee if the agency head determines that such a waiver would be in the public interest. This exception authority cannot be delegated to any other official.

§ 1209.630 Grantees' responsibilities.

(a) As a prior condition of being awarded a grant, each grantee shall make the appropriate certification to the agency, as provided in Appendix C to this part.

(b) Except as provided in this paragraph, a grantee shall make the required certification for each grant. A grantee that is a State may elect to submit an annual certification to each Federal agency from which it obtains grants in lieu of certifications for each grant during the year covered by the certification.

(c) Grantees are not required to provide a certification in order to continue receiving funds under a grant awarded before the effective date of this subpart or under a no-cost time extension of any grant.

APPENDIX A TO PART 1209—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS—PRIMARY COVERED TRANSACTIONS

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to

enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

4. The prospective primary participant shall privide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Tel. #).

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State of local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Appendix B to Part 1209—Certification Regarding Debarment, Suspension, Ineligibilty and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Tel. #).

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Appendix C to Part 1209—Certification Regarding Drug-Free Workplace Requirements

Instructions for Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may

take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All *direct charge* employees; (ii) All *indirect charge* employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

A. The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

____

____

____

Check ☐ if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

[55 FR 21690, 21700, May 25, 1990]

EFFECTIVE DATE NOTE: At 55 FR 21690, 21700, May 25, 1990, Appendix C to part 1209 was revised, effective July 24, 1990. For the convenience of the user, the superseded text follows.

Appendix C to Part 1209—CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

Instructions for Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance was placed when the agency determined to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

Certification Regarding Drug-Free Workplace Requirements

Alternate I

A. The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local

health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee shall insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Alternate II

The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

[54 FR 4951, 4961, Jan. 31, 1989]

SUBCHAPTER B—RECORDS MANAGEMENT

PART 1220—FEDERAL RECORDS; GENERAL

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AUTHORITY: 44 U.S.C. 2104(a) and Chapters 29 and 33.

SOURCE: 50 FR 26930, June 28, 1985, unless otherwise noted.

§ 1220.1 Scope of subchapter.

Subchapter B prescribes policies for Federal agencies' records management programs relating to records creation and maintenance, adequate documentation, and proper records disposition.

§ 1220.2 Responsibility for records management programs.

Public Law 98-497 amended the records management statutes to divide records management responsibilities between the National Archives and Records Administration (NARA) and the General Services Administration (GSA). Under the Act, NARA is responsible for adequacy of documentation and records disposition and GSA is responsible for economy and efficiency in records management. NARA regulations are codified in this Subchapter. GSA records management regulations are codified in 41 CFR Parts 201-2, 201-22, and 201-45. Federal agency records management programs must be in compliance with regulations promulgated by both NARA and GSA.

Subpart A—General Provisions

§ 1220.10 Authority.

The regulations in this part are issued under the provisions of the National Archives and Records Administration Act of 1984 (Pub. L. 98-497, 44 U.S.C. 101 note).

§ 1220.12 Applicability.

The regulations in Subchapter B apply to all Federal agencies as defined in § 1220.14.

§ 1220.14 General definitions.

As used in Subchapter B—

Agency (see *Executive agency* and *Federal agency*).

Adequate and proper documentation means a record of the conduct of Government business that is complete and accurate to the extent required to document the organization, functions, policies, decisions, procedures, and essential transactions of the agency and that is designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency's activities.

Appraisal is the process by which the National Archives and Records Administration (NARA) determines the value and thus the final disposition of Federal records, making them either temporary or permanent.

Comprehensive schedule is a printed agency manual or directive containing descriptions of and disposition instructions for all documentary materials, record and nonrecord, created by a Federal agency or major component of an Executive department. Unless taken from the General Records Schedules (GRS) issued by NARA, the disposition instructions for agency records must be approved by NARA on one or more Standard Form(s) 115, Request for Records Disposition Authority, prior to issuance by the agency. The disposition instructions for the nonrecord material is established by the agency and does not require NARA approval.

Contingent records are records whose final disposition is dependent on an action or event, such as sale of property or destruction of a facility, which will take place at some unspecified time in the future.

Disposition means the action taken with regard to records following their appraisal by NARA. 44 U.S.C. 2901(5) defines *records disposition* as any activity with respect to:

(a) Disposal of temporary records no longer needed for the conduct of business by destruction or donation to an eligible person or organization outside of Federal custody in accordance with the requirements of part 1228 of this chapter.

(b) Transfer of records to Federal agency storage facilities or records centers;

(c) Transfer to the National Archives of the United States of records determined to have sufficient historical or other value to warrant continued preservation; or

(d) Transfer of records from one Federal agency to any other Federal agency in accordance with the requirements of part 1228 of this chapter.

Documentary materials is a collective term for records and nonrecord materials that refers to all media on which information is recorded, regardless of the nature of the medium or the method or circumstances of recording.

Executive agency means any executive department or independent establishment in the executive branch of the Government, including any wholly-owned Government corporation.

Federal agency means any executive agency or any establishment in the legislative or judicial branch of the Government (except the Supreme Court, Senate, the House of Repersentatives, and the Architect of the Capitol and any activities under his direction). (44 U.S.C. 2901(14)).

File means an arrangement of records. The term is used to denote papers, photographs, photographic copies, maps, machine-readable information, or other recorded information regardless of physical form or characteristics, accumulated or maintained in filing equipment, boxes, or machine-readable media, or on shelves, and occupying office or storage space.

Information system is the organized collection, processing, transmission, dissemination, retention, and storage of information in accordance with defined procedures. It is also called a *record system* or simply a *system*. The term is most often used in relation to electronic records and involves input or source documents, records on electronic media, and output records.

National Archives of the United States means those records that have been determined by the Archivist of the United State to have sufficient historical or other value to warrant their continued preservation by the Federal Government, and that have been accepted for deposit in the Archivist's custody.

Nonrecord materials are those Federally owned informational materials that do not meet the statutory definition of records (44 U.S.C. 3301) or that have been excluded from coverage by the definition. Excluded materials are extra copies of documents kept only for reference, stocks of publications and processed documents, and library or museum materials intended solely for reference or exhibit.

Permanent record means any Federal record that has been determined by NARA to have sufficient value to warrant its preservation in the National Archives. Permanent records include all records accessioned by NARA's Office of the National Archives and later increments of the same records, and those for which the disposition is *permanent* on SF 115s, Request for Records Disposition Authority, approved by NARA on or after May 14, 1973.

Recordkeeping requirements means all statements, in statutes, regulations, and agency directives or authoritative issuances, providing general and specific guidance for Federal agency personnel on particular records to be created and maintained by the agency.

Records include all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the Government or because of the informational value of the data in them (44 U.S.C. 3301).

Records management, as used in Subchapter B, means the planning, controlling, directing, organizing, training, promoting, and other managerial activities involved with respect to records creation, records maintenance and use, and records disposition in order to achieve adequate and proper documentation of the policies and transactions of the Federal Government and effective and economical management of agency operations.

Records maintenance and use, as used in Subchapter B, means any activity involving location of records of a Federal agency or the storage, retrieval, and handling of records kept at office file locations by or for a Federal agency.

Records schedule or *schedule* means

(a) An SF 115, Request for Records Disposition Authority, that has been approved by NARA to authorize the disposition of Federal records;

(b) A General Records Schedule (GRS) issued by NARA; or

(c) A printed agency manual or directive containing the records descriptions and disposition instructions approved by NARA on one or more SF 115s or issued by NARA in the GRS. (See also the definition *Comprehensive schedule.*)

Series means file units or documents arranged according to a filing system or kept together because they relate to a particular subject or function, result from the same activity, document a specific kind of transaction, take a particular physical form, or have some other relationship arising out of their creation, receipt, or use, such as restrictions on access and use. Also called a *records series.*

Temporary records. A temporary record is any record which has been determined by the Archivist of the United States to have insufficient value (on the basis of current standards) to warrant its preservation by the National Archives and Records Administration. This determination may take the form of:

(a) A series of recurring records designated as disposable in an agency records disposition schedule approved by NARA (§ 1228.20);

(b) A series of records designated as disposable in a General Records Schedule (§ 1228.22); and

(c) An approved one-time authorization to dispose of records identified on a disposal list (§ 1228.24).

Unscheduled records are records the final disposition of which has not been approved by NARA. Unscheduled records are those not disposable under the General Records Schedules; those that have not been included on a Standard Form 115, Request for Records Disposition Authority, approved by NARA; those described but not authorized for disposal on an SF 115 approved prior to May 14, 1973; and those described on an SF 115 but not approved by NARA (withdrawn, cancelled, or disapproved).

[45 FR 5705, Jan. 24, 1980 and 50 FR 26931, 26933, June 28, 1985, as amended at 52 FR 34134, Sept. 9, 1987; 55 FR 27423, 27427, July 2, 1990]

§ 1220.16 Reports to the Congress and the Director of the Office of Management and Budget.

Under 44 U.S.C. 2904(c)(8), the Archivist of the United States is required to report to Congress and the Office of Management and Budget annually on the results of records management activities, including evaluations of responses by Federal agencies to any recommendations resulting from studies or inspections conducted by NARA.

§ 1220.18 Inspection of records subject to the Privacy Act of 1974.

In accordance with 44 U.S.C. 2906, when NARA inspects an agency record which is contained in a system of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), the records shall be maintained by the Archivist or his designee as a record contained in a system of records or considered to be a record contained in a system of records for the purposes of subsections (b), (c), and (i) of section 552a of title 5.

Subpart B—Agency Records Management Programs

§ 1220.30 Authority.

Section 3101 of Title 44 of the United States Code requires the head of each Federal agency to make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency's activities.

§ 1220.32 Program content.

Agency programs shall, among other things, provide for:

(a) Cooperation with NARA in developing and applying standards, procedures, and techniques designed to improve the management of records, promote the maintenance and security of records deemed appropriate for permanent preservation, and facilitate the segregation and disposal of temporary records.

(b) Compliance with sections 2101-2117, 2501-2507, 2901-2909, 3101-3107, and 3301-3314 of title 44 of the United States Code and with NARA regulations issued in Title 36 of the Code of Federal Regulations.

§ 1220.34 Creation of records.

Adequate records management controls over the creation of Federal agency records shall be instituted to ensure that agency functions are adequately and properly documented. Federal agencies shall also comply with GSA regulations on creation of records found in 41 CFR 201-22.002-3.

§ 1220.36 Maintenance and use of records.

Adequate records management controls over the maintenance and use of records shall be instituted to ensure that permanent records can be located when needed and that they are preserved for eventual transfer to the National Archives of the United States. Agencies shall also be in compliance with GSA regulations on the maintenance and use of records found in 41 CFR part 201-45.

§ 1220.38 Disposition of records.

Provision shall be made to ensure that permanent records are preserved but that records no longer of current use to an agency are promptly disposed of or retired. Effective techniques for the accomplishment of these ends are the development of records disposition schedules; the transfer of records to records centers and the National Archives of the United States; the conversion of the information to other media; and the disposal of valueless records. Disposition of any records requires the approval of the Archivist of the United States (see part 1228 of this chapter).

§ 1220.40 Liaison offices.

An office or offices within each Federal agency shall be assigned responsibility for the development of the records management program required by this part. The office to which responsibility assigned shall be reported to the Office of Records Administration, National Archives (NIA), Washington, DC 20408. The name, title, and telephone number of the official or officials authorized by the head of the agency to approve records disposition schedules and transfers of records to the custody of the National Archives shall also be submitted to the Office of Records Administration.

Subpart C—Agency Program Evaluation

§ 1220.50 Evaluation by NARA.

In accordance with Chapter 29 of Title 44, United States Code, NARA will periodically evaluate agency records management programs for adequate and proper documentation of the agency's organization, functions, and activities; for the selective retention and proper maintenance of permanent records; and for the prompt disposal of records of temporary value in accordance with approved disposition schedules and disposal requests. The objectives of these inspections are to:

(a) Determine agency compliance with the regulations in Subchapter B.

(b) Evaluate the effectiveness of agency records management programs and practices relating to adequacy of documentation, maintenance and use, and records disposition.

§ 1220.52 Agency evaluation review and followup procedures.

(a) A Federal agency has a maximum of 60 calendar days to comment on the factual content of a NARA draft evaluation report.

(b) A Federal agency shall submit an action plan to the Archivist of the United States implementing the recommendations in an evaluation report not later than 90 calendar days after the date of transmittal of the final report to the agency head. The agency action plan shall include:

(1) Specific action(s) the agency plans to take on each evaluation report recommendation. If an agency does not plan to implement a recommendation, the rationale for not acting shall be documented in the action plan; and

(2) Proposed month and year for completing each planned action.

(c) A Federal agency shall submit a progress report on implementation of the action plan every 6 months to the Office of Records Administration until the agency action plan is implemented. Interagency report control number 0153-NAR-AR has been assigned to this report in accordance with 41 CFR Subpart 201-45.6.

(d) NARA will:

(1) Analyze the adequacy of the agency action plan to implement recommendations contained in the evaluation report;

(2) Provide comments to the agency on the plan within 60 calendar days;

(3) Assist the agency in implementing recommendations; and

(4) Notify an agency when progress reports are no longer required.

§ 1220.54 Agency internal evaluation.

Each agency should periodically evaluate its records management programs relating to adequacy of documentation, maintenance and use, and records disposition. These evaluations should determine compliance with NARA regulations in Subchapter B and assess the effectiveness of the agency's programs. Criteria for agency self-evaluations are available from the Office of Records Administration (NIA).

§ 1220.56 Interagency program evaluations and studies.

Section 2904 of title 44, United States Code, authorizes the Archivist of the United States to conduct inspections or surveys of records and records management programs and practices within and between Federal agencies.

PART 1222—CREATION AND MAINTENANCE OF RECORDS; ADEQUATE AND PROPER DOCUMENTATION

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1222.48 Data created or received and maintained for the Government by contractors.
1222.50 Records maintenance.

AUTHORITY: 44 U.S.C. 2904, 3101, and 3102.

SOURCE: 55 FR 27423, July 2, 1990, unless otherwise noted.

Subpart A—General

§ 1222.10 Authority.

(a) 44 U.S.C. 2904, vests in the Archivist of the United States responsibility for providing guidance and assistance to Federal agencies with respect to ensuring adequate and proper documentation of the policies and transactions of the Federal Government, including developing and issuing standards to improve the management of records.

(b) 44 U.S.C. 3101, requires that the head of each Federal agency shall make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency's activities.

(c) 44 U.S.C. 3102, requires that the head of each Federal agency shall establish and maintain an active, continuing program for the economical and efficient management of the records of the agency. The program, among other things, shall provide for—

(1) Effective controls over the creation, and over the maintenance and use of records in the conduct of current business;

(2) Cooperation with the Administrator of General Services and the Archivist in applying standards, procedures, and techniques designed to improve the management of records, promote the maintenance and security of records deemed appropriate for preservation, and facilitate the segregation and disposal of records of temporary value.

§ 1222.12 Defining Federal records.

(a) The statutory definition of Federal records is contained in 44 U.S.C. 3301 and is stated in § 1220.14 of this chapter.

(b) Several key terms, phrases, and concepts in the statutory definition of records are defined as follows:

(1) *Documentary materials* is a collective term for records, nonrecord materials, and personal papers that refers to all media containing recorded information, regardless of the nature of the media or the method(s) or circumstance(s) of recording.

(2) *Regardless of physical form or characteristics* means that the medium may be paper, film, disk, or other physical type or form; and that the method of recording may be manual, mechanical, photographic, electronic, or any other combination of these or other technologies.

(3) *Made* means the act of creating and recording information by agency personnel in the course of their official duties, regardless of the method(s) or the medium involved. The act of recording is generally identifiable by the circulation of the information to others or by placing it in files accessible to others.

(4) *Received* means the acceptance or collection of documentary materials by agency personnel in the course of their official duties regardless of their origin (for example, other units of their agency, private citizens, public officials, other agencies, contractors, Government grantees) and regardless of how transmitted (in person or by messenger, mail, electronic means, or by any other method). In this context, the term does not refer to misdirected materials. It may or may not refer to loaned or seized materials depending on the conditions under which such materials came into agency custody or were used by the agency. Advice of legal counsel should be sought regarding the "record" status of loaned or seized materials.

(5) *Preserved* means the filing, storing, or any other method of systematically maintaining documentary materials by the agency. This term covers materials not only actually filed or otherwise systematically maintained but also those temporarily removed from existing filing systems.

(6) *Appropriate for preservation* means documentary materials made or received which in the judgment of the

agency should be filed, stored, or otherwise systematically maintained by an agency because of the evidence of agency activities or information they contain, even though the materials may not be covered by its current filing or maintenance procedures.

[55 FR 27423, July 2, 1990; 55 FR 31982, Aug. 6, 1990]

Subpart B—Program Requirements

§ 1222.20 Agency responsibilities.

(a) The head of each Federal agency, in meeting the requirements of 44 U.S.C. 2904, 3101, and 3102, shall observe the responsibilities and standards set forth in this part. Agencies are also subject to regulations issued by the General Services Administration (GSA) in 41 CFR Chapter 201.

(b) Each Federal agency shall:

(1) Assign to one or more offices of the agency the responsibility for the development and implementation of agencywide programs to identify, develop, issue, and periodically review recordkeeping requirements for all agency activities at all levels and locations and for all media, including paper, audiovisual, cartographic, and electronic records; and notify the National Archives and Records Administration (NARA), Office of Records Administration (NI), Washington, DC 20408 of the assignment;

(2) Integrate programs for the identification, development, issuance, and periodic review of recordkeeping requirements with other records and information resources management programs of the agency, including the requirement of close coordination between the office designated in 36 CFR 1222.20(b)(1) and the office assigned overall records management responsibility in accordance with 36 CFR 1220.40, if the two are different;

(3) Issue a directive(s) establishing program objectives, responsibilities, and authorities for agency recordkeeping requirements. Copies of the directive(s) (including subsequent amendments or supplements) shall be disseminated throughout the agency, as appropriate, and a copy shall be sent to NARA (NI);

(4) Establish procedures for the participation of records management officials in developing new or revised agency programs, processes, systems, and procedures in order to ensure that adequate recordkeeping requirements are established and implemented;

(5) Ensure that adequate training is provided to agency personnel at all levels on policies, responsibilities, and techniques for the implementation of recordkeeping requirements;

(6) Develop and implement records schedules for all records created and received by the agency and obtain NARA approval of the schedules in accordance with 36 CFR part 1228;

(7) Ensure compliance with applicable Governmentwide policies, procedures, and standards relating to recordkeeping requirements as may be issued by the Office of Management and Budget, the General Services Administration, the National Archives and Records Administration, the National Institute of Standards and Technology, or other agencies, as appropriate;

(8) Review recordkeeping requirements, as part of the periodic information resources management reviews required by 44 U.S.C. 3506, or the periodic records management evaluations required by 36 CFR 1220.54, in order to validate their currency and to ensure that recordkeeping requirements are being implemented.

(9) Remind all employees annually of the agency's recordkeeping policies and of the sanctions provided for the unlawful removal or destruction of Federal records (18 U.S.C. 2071).

Subpart C—Standards for Agency Recordkeeping Requirements

§ 1222.30 Purpose.

(a) The clear articulation of recordkeeping requirements by Federal agencies is essential if agencies are to meet the requirements of 44 U.S.C. 3101 and 3102 with respect to creating, receiving, maintaining, and preserving adequate and proper documentation, and with respect to maintaining an active, continuing program for the economical and efficient management of agency records.

(b) Although many agencies regularly issue recordkeeping requirements for routine operations, many do not adequately specify such requirements for documenting policies and decisions, nor do they provide sufficient guidance so that agency personnel can distinguish between records and nonrecord materials.

(c) Since agency functions, activities, and administrative practices vary so widely, NARA cannot issue a comprehensive list of all categories of documentary materials appropriate for preservation by an agency as evidence of its activities or because of the information they contain. In all cases, the agency must consider the intent or circumstances of creation or receipt of the materials to determine whether their systematic maintenance shall be required.

§ 1222.32 General requirements.

Agencies shall identify, develop, issue, and periodically review their recordkeeping requirements for all their activities at all levels and locations and for all media. Recordkeeping requirements shall:

(a) Identify and prescribe specific categories of documentary materials to be systematically created or received and maintained by agency personnel in the course of their official duties;

(b) Prescribe the use of materials and recording techniques that ensure the preservation of records as long as they are needed by the Government;

(c) Prescribe the manner in which these materials shall be maintained wherever held; and

(d) Distinguish records from nonrecord materials and, with the approval of the Archivist of the United States, prescribe action for the final disposition of agency records when they are no longer needed for current business.

§ 1222.34 Identifying Federal records.

(a) *General.* To ensure that complete and accurate records are made and retained in the Federal Government, it is essential that agencies distinguish between records and nonrecord materials by the appropriate application of the definition of records (see 44 U.S.C. 3301 and 36 CFR 1220.14) to agency documentary materials. Applying the definition of records to most documentary materials created or received by agencies presents few problems when agencies have established and periodically updated recordkeeping requirements covering all media and all agency activities at all levels and locations.

(b) *Record status.* Documentary materials are records when they meet both of the following conditions:

(1) They are made or received by an agency of the United States Government under Federal law or in connection with the transaction of agency business; and

(2) They are preserved or are appropriate for preservation as evidence of agency organization and activities or because of the value of the information they contain.

(c) *Working files and similar materials.* Working files, such as preliminary drafts and rough notes, and other similar materials shall be maintained for purposes of adequate and proper documentation if:

(1) They were circulated or made available to employees, other than the creator, for official purposes such as approval, comment, action, recommendation, follow-up, or to communicate with agency staff about agency business; and

(2) They contain unique information, such as substantive annotations or comments included therein, that adds to a proper understanding of the agency's formulation and execution of basic policies, decisions, actions, or responsibilities.

(d) *Nonrecord materials.* Nonrecord materials are Government-owned documentary materials that do not meet the conditions of record status (see § 1222.34(b)) or that are specifically excluded from status as records by statute (see 44 U.S.C. 3301):

(1) Library and museum material (but only if such material is made or acquired and preserved solely for reference or exhibition purposes);

(2) Extra copies of documents (but only if the sole reason such copies are preserved is for convenience of reference); and

(3) Stocks of publications and of processed documents. (Each agency shall create and maintain serial or record sets of its publications and processed documents, as evidence of agency activities and for the informa-

tion they contain, including annual reports, brochures, pamphlets, books, handbooks, posters and maps.)

§ 1222.36 Identifying personal papers.

(a) Personal papers are documentary materials, or any reasonably segregable portion thereof, of a private or nonpublic character that do not relate to or have an effect upon the conduct of agency business. Personal papers are excluded from the definition of Federal records and are not owned by the Government. Examples of personal papers include:

(1) Materials accumulated by an official before joining Government service that are not used subsequently in the transaction of Government business;

(2) Materials relating solely to an individual's private affairs, such as outside business pursuits, professional affiliations, or private political associations that do not relate to agency business; and

(3) Diaries, journals, personal correspondence, or other personal notes that are prepared or used for, or circulated or communicated in the course of, transacting Government business.

(b) Personal papers shall be clearly designated as such and shall at all times be maintained separately from the office's records.

(c) If information about private matters and agency business appears in the same document, the document shall be copied at the time of receipt, with the personal information deleted, and treated as a Federal record.

(d) Materials labeled "personal," confidential," or "private," or similarly designated, and used in the transaction of public business, are Federal records subject to the provisions of pertinent laws and regulations. The use of a label such as "personal" is not sufficient to determine the status of documentary materials in a Federal office.

[55 FR 27423, July 2, 1990; 55 FR 28136, July 9, 1990]

§ 1222.38 Categories of documentary materials to be covered by recordkeeping requirements.

Agency recordkeeping requirements shall prescribe the creation and maintenance of records of the transaction of agency business that are sufficient to:

(a) Document the persons, places, things, or matters dealt with by the agency.

(b) Facilitate action by agency officials and their successors in office.

(c) Make possible a proper scrutiny by the Congress or other duly authorized agencies of the Government.

(d) Protect the financial, legal, and other rights of the Government and of persons directly affected by the Government's actions.

(e) Document the formulation and execution of basic policies and decisions and the taking of necessary actions, including all significant decisions and commitments reached orally (person to person, by telecommunications, or in conference).

(f) Document important board, committee, or staff meetings.

§ 1222.40 Removal of records.

Agencies shall develop procedures to ensure that departing officials do not remove Federal records from agency custody.

§ 1222.42 Removal of nonrecord materials.

Nonrecord materials, including convenience or personal copies of agency records, may be removed from Government custody with the approval of the head of the agency or the individual authorized to act for the agency on matters pertaining to agency records. Agencies shall develop procedures to ensure that nonrecord materials that are security classified or that contain other agency restrictions on access are properly protected when removed from agency custody.

§ 1222.44 Directives documenting agency programs, policies, and procedures.

Agency recordkeeping requirements shall prescribe that the programs, policies, and procedures of the agency shall be adequately documented in appropriate directives. A record copy of each such directive (including those superseded) shall be maintained by the appropriate agency directives management officer(s) as part of the official files.

§ 1222.46 Recordkeeping requirements of other agencies.

When statutes, regulations, directives or authoritative issuances of other agencies prescribe an agency's recordkeeping requirements, the agency so affected shall include these in appropriate directives or other authoritative issuances prescribing its organization, functions, or activities.

§ 1222.48 Data created or received and maintained for the Government by contractors.

(a) Contractors performing Congressionally-mandated program functions are likely to create or receive data necessary to provide adequate and proper documentation of these programs and to manage them effectively. Agencies shall specify the delivery of the Government of all data needed for the adequate and proper documentation of contractor-operated programs in accordance with requirements of the Federal Acquisition Regulation (FAR) and, where applicable, the Defense Federal Acquisition Regulation Supplement (DFARS).

(b) When contracts involve the creation of data for the Government's use, in addition to specifying a final product, agency officials may need to specify the delivery of background data that may have reuse value to the Government. Before specifying the background data that contractors must deliver to the agency, program and contracting officials shall consult with agency records and information managers and historians and, when appropriate, with other Government agencies to ensure that all agency and Government needs are met, especially when the data deliverables support a new agency mission or a new Government program.

(c) Deferred ordering and delivery-of-data clauses and rights-in-data clauses shall be included in contracts whenever necessary to ensure adequate and proper documentation or because the data have reuse value to the Government.

(d) When data deliverables include electronic records, the agency shall require the contractor to deliver sufficient technical documentation to permit the agency or other Government agencies to use the data.

(e) All data created for Government use and delivered to, or falling under the legal control of, the Government are Federal records and shall be managed in accordance with records management legislation as codified at 44 U.S.C. chapters 21, 29, 31, and 33, the Freedom of Information Act (5 U.S.C. 552), and the Privacy Act (5 U.S.C. 552a), and shall be scheduled for disposition in accordance with 36 CFR part 1228.

§ 1222.50 Records maintenance.

(a) Agency recordkeeping requirements shall prescribe an appropriate records maintenance program so that complete records are filed, records can be found when needed, the identification and retention of permanent records are facilitated, and permanent and temporary records are segregated.

(b) Each Federal agency, in providing for effective controls over the maintenance of records, shall:

(1) Establish and implement standards and procedures for classifying, indexing, and filing records as set forth in GSA and NARA handbooks;

(2) Formally specify official file locations and prohibit the maintenance of records at unauthorized locations;

(3) Standardize reference service procedures to facilitate the finding, charging out, and refiling of its records;

(4) Make available to all agency employees published standards, guides, and instructions designed for easy reference and revision;

(5) Review its records maintenance program periodically to determine its adequacy; audit a representative sample of its files for duplication, misclassification, or misfiles;

(6) Maintain microform, audiovisual, and electronic records in accordance with 36 CFR parts 1230, 1232, and 1234, respectively;

(7) Establish and implement procedures for maintaining all nonrecord materials separately from the office's records; and

(8) Establish and implement procedures for the separate maintenance of

any personal papers in accordance with § 1222.36.

PART 1228—DISPOSITION OF FEDERAL RECORDS

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AUTHORITY: 44 U.S.C. chapters 21, 29, and 31.

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EDITORIAL NOTE: Nomenclature changes to part 1228 appear at 50 FR 15724, 15728, Apr. 19, 1985, and at 50 FR 26933, June 28, 1985.

§ 1228.1 Scope of Part.

This part sets policies and establishes standards, procedures, and techniques for the disposition of all Federal records in accordance with 44 U.S.C. Chapters 21, 29, 31, and 33. The disposition of documentary materials created or acquired by a Federal agency, regardless of physical form or characteristics, is controlled by this part if any of the following conditions are met:

(a) The materials are created or received in the course of business and contain information related to the organization, functions, policies, decisions, procedures, operations, or other official activities of the agency. Also included is documentation of oral exchanges such as telephone conversations and meetings during which policy was discussed or formulated or other significant activities of the agency were planned, discussed, or transacted.

(b) The creation, retention, or disposition of the materials is mandated by statute or agency or other Federal regulations, directives, policies, or procedures.

(c) The materials are controlled, maintained, preserved, processed, filed, or otherwise handled following established agency procedures for records.

(d) The material contains unique information, such as substantive annotations, including drafts, transmittal sheets, and final documents or other materials circulated or made available to employees other than the creator for official purposes, such as approval, comment, action, recommendation, follow-up, or to keep agency staff informed regarding agency business.

[55 FR 27428, July 2, 1990]

Subpart A—Records Disposition Programs

§ 1228.10 Authority.

The head of each agency (in accordance with 44 U.S.C. 2904, 3102, and 3301) is required to establish and maintain a records disposition program to ensure efficient, prompt, and orderly reduction in the quantity of records and to provide for the proper maintenance of records designated as permanent by NARA.

[55 FR 27428, July 2, 1990]

§ 1228.12 Basic elements of disposition programs.

The primary steps in managing a records disposition program are given below. Details of each element are contained in the NARA records management handbook, Disposition of Federal Records (NSN 7610-01-055-8704).

(a) Issue a program directive assigning authorities and responsibilities for records disposition activities in the agency and keep that directive up to date.

(b) Develop, implement, and maintain an accurate, current, and comprehensive records schedule.

(c) Train all agency personnel taking part in the agency's records disposition activities.

(d) Publicize the program to make all agency employees aware of their records disposition responsibilities.

(e) Evaluate the results of the program to ensure adequacy, effectiveness, and efficiency.

[55 FR 27428, July 2, 1990]

Subpart B—Scheduling Records

SOURCE: 55 FR 27429, July 2, 1990, unless otherwise noted.

§ 1228.20 Authorities.

(a) The head of each agency shall direct the creation and preservation of records containing accurate and complete documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency (44 U.S.C. 3101). The National Archives and Records Administration shall establish standards for the retention of those records having continuing value, and assist Federal agencies in applying the standards to records in their custody (44 U.S.C. 2905).

(b) No Federal records shall be destroyed or otherwise alienated from the Government except in accordance with procedures described in this part 1228 (44 U.S.C. 3314).

§ 1228.22 Developing records schedules.

The primary steps in developing agency records schedules are given below. Details in each step are contained in the NARA records management handbook, Disposition of Federal Records (NSN 7610-01-055-8704). Ultimately, all records of an agency must be scheduled, but they need not all be scheduled at the same time. An agency may schedule the records of one function, program or organizational element at a time.

(a) Determine the functions and activities documented by the records to be scheduled.

(b) Prepare an inventory of the records including a description of their medium, location, volume, inclusive dates, informational content and use.

(c) Evaluate the period of time the agency needs each records series or system by reference to its uses and value to agency operations or legal obligations.

(d) Based on agency need, formulate specific recommended disposition instructions for each records series or each part of an automated information system, including file breaks, retention periods for temporary records, transfer periods for permanent records, and instructions for the retirement of records to Federal records centers, when appropriate. Recommended retention periods take into account the rights of the Government and the rights of those directly affected by agency actions.

(e) Assemble into a draft schedule the descriptions and recommended disposition instructions for logical blocks of records, i.e., entire agency, organizational component, or functional area.

(f) Obtain approval of the records schedules from NARA (and from the General Accounting Office, when so required under Title 8 of the GAO "Policy and Procedures Manual for the Guidance of Federal Agencies").

§ 1228.24 Formulation of agency records schedules.

(a) *General.* Agency records schedules approved by the Archivist of the United States specify the disposition for agency records. Records of continuing (permanent) value will be scheduled for retention and immediate or eventual transfer to the legal custody of NARA. All other records will be scheduled for destruction or donation after a specific period of time based on administrative, fiscal, and legal values.

(b) *Characteristics of schedules.* Though records disposition authority may be requested from NARA on a program-by-program, function-by-function, or office-by-office basis, all agency records must be scheduled. Schedules must follow the guidelines provided below:

(1) Schedules shall identify and describe clearly each series or system and shall contain disposition instructions that can be readily applied. (Additional information is required for permanent records as specified in § 1228.28(b).) Schedules must be prepared so that each office will have standing instructions detailing the disposal, transfer, or retention of records.

(2) SF 115s shall include only new records not covered by the General Records Schedules (GRS) (see subpart C), deviations from the GRS (see § 1228.42), or previously scheduled records requiring changes in retention periods or substantive changes in description.

(3) All schedules shall take into account the physical organization of records or the filing system so that disposal or transfer can be handled in blocks.

(4) The disposition of nonrecord materials is controlled by instructions in the agency's printed or published records disposition manual. These instructions do not require NARA approval. Such items shall not be included on SF 115s. Non-record materials, such as extra copies of documents preserved solely for reference, and stocks of processed documents, and personal materials shall be maintained separately from official agency files to aid in records disposition.

(c) *Provisions of schedules.* Records schedules shall provide for:

(1) The destruction of records that have served their statutory, fiscal, or administrative uses and no longer have sufficient value to justify further retention. Procedures for obtaining

disposal authorizations are prescribed in § 1228.30;

(2) The removal to a Federal records center (or to an agency records center approved under subpart K) of records not eligible for immediate destruction or other disposition but which are no longer needed in office space. These records are maintained by the records center until they are eligible for further disposition action;

(3) The retention of the minimum volume of current records in office space consistent with effective and efficient operations; and

(4) The identification of records of permanent value in accordance with § 1228.28, and the establishment of cutoff periods and dates when such records will be transferred to the legal custody of NARA.

§ 1228.26 Request for records disposition authority.

(a) *Submission.* Requests for records disposition authority shall be initiated by Federal agencies by submitting Standard Form 115, Request for Records Disposition Authority, to NARA (NIR). An SF 115 is used for requesting authority to schedule (or establish the disposition for) permanent and temporary records, either on a recurring or one-time basis.

(1) New Federal agencies shall apply General Records Schedules to eligible records and shall submit to NARA SF 115s covering all remaining records within 2 years of their establishment.

(2) Agencies shall submit to NARA schedules for the records of new programs and of programs that are reorganized or otherwise changed in a way that results in the creation of new or different records within 1 year of the implementation of the change.

(b) *Certification.* The signature of the authorized agency representative on the SF 115 shall constitute certification that the records recommended for disposal do not or will not have sufficient administrative, legal, or fiscal value to the agency to warrant retention beyond the expiration of the specified period and that records described as having permanent value will be transferred to the National Archives upon expiration of the stated period.

(c) *Disapproval of requests for disposition authority.* Requests for records disposition authority may be returned to the agency if the SF 115 is improperly prepared. The agency shall make the necessary corrections and resubmit the form to NARA (NIR). NARA may disapprove the disposition request for an item if, after appraisal of the records, NARA determines that the proposed disposition is not consistent with the value of the records. In such cases, NARA will notify the agency in writing.

[55 FR 27429, July 2, 1990; 55 FR 28136, July 9, 1990]

§ 1228.28 Scheduling permanent records.

(a) *Initiation.* Federal agencies propose permanent retention of records in accordance with guidelines contained in the NARA records management handbook, Disposition of Federal Records (NSN 7610-01-055-8704).

(b) *Requirements.* Each item proposed for permanent retention on an SF 115 shall include the following:

(1) Records series title used by agency personnel to identify the records;

(2) Complete description of the records including physical type and information contents;

(3) Inclusive dates;

(4) An arrangement statement;

(5) Statement of restrictions on access which NARA should impose in conformity with the Freedom of Information Act if the records are proposed for immediate transfer;

(6) An estimate of the volume of records accumulated annually if the records are current and continuing;

(7) The total volume to date; and

(8) Disposition instructions, developed using the following guidelines:

(i) If the records series or system is current and continuing, the SF 115 will include a disposition instruction specifying the period of time after which the records will be transferred to the National Archives, normally within 30 years for paper records, 5-10 years for audiovisual or microform records, and as soon as the records become inactive or the agency cannot meet the maintenance requirements found in § 1228.188 of this part for electronic records.

(ii) If the records series or system is nonrecurring, i.e., no additional records will be created or acquired, the agency may propose either immediate or future transfer to the National Archives.

(c) *Determination.* NARA will determine whether or not records are of permanent value and when the transfer of the permanent records will take place.

(1) If NARA determines that records are not permanent, it will notify the agency and negotiate an appropriate disposition. The disposition instruction on the SF 115 will be modified prior to NARA approval.

(2) If NARA determines that records are permanent, but that the transfer instructions are not appropriate, it will negotiate appropriate transfer terms with the agency. The disposition instruction on the SF 115 will be modified prior to NARA approval.

[55 FR 27429, July 2, 1990; 55 FR 31982, Aug. 6, 1990]

§ 1228.30 Scheduling temporary records.

(a) *Initiation.* Federal agencies request authority to dispose of records, either immediately or on a recurring basis. Requests for immediate disposal are limited to records already in existence which no longer accumulate. For recurring records, approved schedules provide continuing authority to destroy the records. The retention periods approved by NARA are mandatory, and the agency shall dispose of the records after expiration of the retention period, except as provided in § 1228.54.

(b) *Requirements.* Each item on an SF 115 proposed for eventual destruction shall include the following:

(1) Records series title used by agency personnel to identify the records;

(2) Description of the records including physical type and informational content;

(3) Statement of any Privacy Act restrictions on the records; and

(4) Disposition instructions, developed using the following guidelines:

(i) If the records series or system is current and continuing, the SF 115 will include a disposition instruction specifying the period of time after which the records will be destroyed.

(ii) If the records series or system is nonrecurring, i.e., no additional records will be created or acquired, the agency may propose either immediate destruction or destruction on a future date.

(c) *Determination.* NARA may determine that records proposed as temporary merit permanent retention and transfer to the National Archives. In such cases, NARA arranges with the agency to change the disposition instruction prior to approval of the SF 115.

(d) *General Accounting Office concurrence.* Each Federal agency shall obtain the approval of the Comptroller General for the disposal of program records less than 3 years old and for certain classes of records relating to claims and demands by or against the Government, and to accounts in which the Government is concerned in accordance with the GAO "Policy and Procedures Manual for Guidance of Federal Agencies," Title 8—Records Management (44 U.S.C. 3309). This approval must be obtained before the approval of the disposal request by NARA, but the request may be submitted concurrently to GAO and NARA.

(e) *Withdrawn items.* Agencies may request that items listed on the SF 115 be withdrawn in order to aid in NARA's processing (appraisal) of the remaining items on the schedule.

(1) If, during the course of the appraisal process, NARA determines that records described by an item(s) on the proposed schedule do not exist or are not arranged as stated on the SF 115, NARA may request the agency to withdraw the item(s) from consideration, if the agency is unable to offer sufficient clarification.

(2) If NARA and the agency cannot agree on the retention period for an item(s), the items(s) may be withdrawn. In these cases, the agency will submit an SF 115 with a revised proposal for disposition within 6 months of the date of the approval of the original SF 115.

§ 1228.32 Request to change disposition authority.

Agencies desiring to change the approved disposition of a series or system of records shall submit an SF 115. Disposition authorities contained in approved SF 115s are automatically superseded by approval of a later SF 115 applicable to the same records unless the later SF 115 specified an effective date. Agencies submitting revised schedules shall indicate on the SF 115 the relevant schedule and item numbers to be superseded, the citation to the current printed records disposition schedule, if any, and/or the General Records Schedules and item numbers which cover the records.

Subpart C—General Records Schedules

SOURCE: 55 FR 27430, July 2, 1990, unless otherwise noted.

§ 1228.40 Authority.

The Archivist of the United States shall issue schedules authorizing disposal, after specified periods of time, of records common to several or all agencies after determining that the records lack value for continued retention by the U.S. Government. General Records Schedules constitute authority to destroy records described therein after expiration of the stated retention period. Application of the disposition instructions in these schedules is mandatory (44 U.S.C. 3303a).

§ 1228.42 Applicability.

(a) New items or changes in the disposition of GRS records supersede approved agency schedules for the same series or system of records, unless the agency schedule provides for a shorter retention period, or unless NARA indicates that the GRS standard must be applied without exception. Agencies shall not request authority to apply GRS authorizations (see § 1228.24(b)(2)).

(b) Agencies may request exceptions to disposition instructions in the GRS by submitting an SF 115 in accordance with § 1228.30 accompanied by a written justification explaining why the agency needs the records for a different period of time from other agencies.

(c) Provisions of the General Records Schedules may be applied to records in the custody of the National Archives at NARA's discretion subject to the provisions of § 1228.200.

§ 1228.44 Current schedules.

The following General Records Schedules governing the disposition of records common to several or all agencies were developed by the National Archives and Records Administration after consultation with other appropriate agencies. They have been approved by the Archivist of the United States.

SCHEDULE NUMBER AND TYPE OF RECORDS GOVERNED

1. Civilian Personnel Records.
2. Payrolling and Pay Administration Records.
3. Procurement, Supply and Grant Records.
4. Property Disposal Records.
5. Budget Preparation, Presentation, and Apportionment Records.
6. Accountable Officers' Accounts Records.
7. Expenditure Accounting Records.
8. Stores, Plant, and Cost Accounting Records.
9. Travel and Transportation Records.
10. Motor Vehicle Maintenance and Operation Records.
11. Space and Maintenance Records.
12. Communications Records.
13. Printing, Binding, Duplication, and Distribution Records.
14. Information Services Records.
15. Housing Records.
16. Administrative Management Records.
17. Cartographic, Aerial Photographic, Architectural, and Engineering Records.
18. Security and Protective Services Records.
19. Research and Development Records: RESCINDED.
20. Electronic Records.
21. Audiovisual Records.
22. Inspector General Records.
23. Records Common to Most Offices Within Agencies.

§ 1228.46 Availability.

The GRS and instructions for their use are available from NARA (NI). The Archivist of the United States distributes new schedules and schedule revisions under sequentially numbered GRS transmittals.

Subpart D—Implementing Schedules

SOURCE: 55 FR 27431, July 2, 1990, unless otherwise noted.

§ 1228.50 Application of schedules.

The application of approved schedules is mandatory (44 U.S.C. 3303a). The Archivist of the United States will determine whether or not records may be destroyed or transferred to the National Archives. If the Archivist approves the request for disposition authority, NARA will notify the agency by returning one copy of the completed SF 115. This shall constitute mandatory authority for the final disposition of the records (for withdrawal of disposal authority or the extension of retention periods, see §§ 1228.52 and 1228.54). The authorized destruction shall be accomplished as prescribed in § 1228.58. The head of each Federal agency shall direct the application of records schedules to ensure the agency maintains recorded information necessary to conduct Government business, avoid waste, and preserve permanent records for transfer to the National Archives. The agency head shall take the following steps to ensure proper dissemination and application of approved schedules:

(a) Issue an agency directive incorporating the disposition authorities approved by NARA, i.e., SF 115s (except for one-time authorities covering nonrecurring records) and the General Records Schedules. Also include nonrecord materials with disposition instructions developed by the agency. Once all records and nonrecord materials are included, this document is the agency's comprehensive schedule. Agencies may also issue other directives containing instructions relating to agency records disposition procedures.

(1) Published schedules do not include nonrecurring records for which NARA has granted authority for immediate disposal or transfer to the National Archives. They do include general instructions for retirement of records to the Federal records centers, transfer of records to the National Archives, and other records disposition procedures.

(2) Comprehensive schedules are formally published manuals or directives that provide for the disposition of all recurring records and nonrecord materials created by an agency. These schedules must cite the GRS or SF 115 and item numbers that provide the legal disposition authority for items covering record material.

(3) Prior to issuance, agencies may consult with NARA concerning directives or other issuances containing approved schedules, instructions for use of the Federal records centers, transfer of records to the National Archives, or other matters covered by NARA procedures or regulations.

(4) Agencies shall forward to the National Archives and Records Administration (NIR) three copies of each final directive or other issuance relating to records disposition and 20 copies of all published records schedules (printed agency manuals) and changes.

(b) Establish internal training programs to acquaint appropriate personnel with the requirements and procedures of the records disposition program.

(c) Apply the approved records disposition schedules to the agency's records.

(1) Records described by items marked "disposition not approved" or "withdrawn" may not be destroyed until a specific disposition has been approved by NARA.

(2) Disposition authorities for items on approved SF 115s that specify an organizational component of the department or independent agency as the creator or custodian of the records may be applied to the same records after internal reorganization, but only if the nature, content, and functional importance of the records remain the same. Authority approved for items described in a functional format may be applied to any organizational component within the department or independent agency that is responsible for the relevant function.

(3) Disposition authorities approved for one department or independent agency may not be applied by another. Departments or agencies that acquire records from another department or agency, and/or continue creating the

same series of records previously created by another department or agency through interagency reorganization must submit an SF 115 to NARA for disposition authorization for the records within one year of the reorganization.

(4) Unless otherwise specified, disposition authorities apply retroactively to all existing records as described in the schedule, including records acquired by transfer of function within or between agencies, as long as the nature, content, and functional importance of the records series is unchanged.

(d) Review approved schedules, and, if necessary, update them annually. Additions and changes to the GRS shall be incorporated or otherwise disseminated within 6 months of issuance from NARA.

§ 1228.52 Withdrawal of disposal authority.

In an emergency or in the interest of efficiency of Government operations, NARA will withdraw disposal authorizations in approved disposal schedules (44 U.S.C. 2909). This withdrawal may apply to particular items on schedules submitted by agencies or may apply to all existing authorizations for the disposal of a specified type of record obtained by any or all agencies of the Government. If the withdrawal is applicable to only one agency, that agency will be notified of this action by letter signed by the Archivist; if applicable to more than one agency, notification may be by NARA bulletin issued and signed by the Archivist.

§ 1228.54 Temporary extension of retention periods.

(a) Approved agency records schedules and the General Records Schedules are mandatory (44 U.S.C. 3303a). Except as specified in paragraph (g) of this section, records series or systems approved for destruction shall not be maintained longer without the prior written approval of the National Archives and Records Administration (NIR). However, extended retention of individual shipments of records to a Federal records center are governed by procedures in § 1228.164(c).

(b) Upon submission of adequate justification, NARA may authorize a Federal agency to extend the retention period of a series or system of records (44 U.S.C. 2909). These extensions of retention periods will be granted for records which are required to conduct Government operations because of special circumstances which alter the normal administrative, legal, or fiscal value of the records.

(c) The head of a Federal agency may request approval of a temporary extension of a retention period by sending a letter to NARA (NIR), Washington DC 20408. The request shall include:

(1) A concise description of the records series for which the extension is requested.

(2) A complete citation of the specific provisions of the agency records schedule or the General Records Schedule currently governing disposition of the records;

(3) A statement of the estimated period of time that the records will be required; and

(4) A statement of the current and proposed physical location of the records including information on whether the records have been or will be transferred to one or more Federal records centers.

(d) Approval of a request for extension of retention periods may apply to records in the custody of one Federal agency or records common to several or all Federal agencies. If approval of a request is applicable to records in the custody of one agency, that agency will be notified by letter. If approval is applicable to records common to several agencies, notification may be made by NARA bulletin.

(e) Upon approval of a request for a change in retention periods applicable to records that have been or will be transferred to one or more Federal records centers, centers will be notified of the change and agencies will be furnished a copy of the notification. Agencies shall forward to the National Archives and Records Administration (NIR) 20 copies of all formally issued instructions which extend retention periods.

(f) Upon expiration of an approved extension of retention period, NARA will notify all affected agencies to apply normal retention requirements.

(g) Prior written approval of the National Archives and Records Administration is not required when records must be retained longer than their scheduled retention period because of court order. In such cases, agencies shall submit a report transmitting a copy of the court order to the National Archives and Records Administration (NIR) of the extension within 30 days after issuance of the court order. The notification shall include the information specified in paragraph (c) of this section.

§ 1228.56 Transfer of permanent records.

All records scheduled as permanent shall be transferred to the National Archives after the period specified on the SF 115 in accordance with procedures specified under subpart J.

§ 1228.58 Destruction of temporary records.

(a) *Authority.* Federal agencies are required to follow regulations issued by the Archivist of the United States governing the methods of destroying records (44 U.S.C. 3302). Only the methods described in this section shall be used.

(b) *Sale or salvage.* Paper records to be disposed of normally must be sold as wastepaper. If the records are restricted because they are national security classified or exempted from disclosure by statute, including the Privacy Act, or regulation, the wastepaper contractor must be required to pulp, macerate, shred, or otherwise definitively destroy the information contained in the records, and their destruction must be witnessed either by a Federal employee or, if authorized by the agency that created the records, by a contractor employee. The contract for sale must prohibit the resale of all other paper records for use as records or documents. Records other than paper records (audio, visual, and data tapes, disks, and diskettes) may be salvaged and sold in the same manner and under the same conditions as paper records. All sales must be in accordance with the established procedures for the sale of surplus personal property. (See 41 CFR part 101-45, Sale, Abandonment, or Destruction of Personal Property.)

(c) *Destruction.* If the records cannot be sold advantageously or otherwise salvaged, the records may be destroyed by burning, pulping, shredding, macerating, or other suitable means.

§ 1228.60 Donation of temporary records.

(a) When the public interest will be served, a Federal agency may propose the transfer of records eligible for disposal to an appropriate person, organization, institution, corporation, or government (including a foreign government) that has requested them. Records will not be transferred without prior written approval of NARA.

(b) The head of a Federal agency shall request the approval of such a transfer by sending a letter to NARA (NIR), Washington, DC 20408. The request shall include:

(1) The name of the department or agency, and subdivisions thereof, having custody of the records;

(2) The name and address of the proposed recipient of the records;

(3) A list containing:

(i) An identification by series or system of the records to be transferred,

(ii) The inclusive dates of the records,

(iii) The NARA disposition of job (SF 115) or GRS and item numbers that authorize disposal of the records;

(4) A statement providing evidence:

(i) That the proposed transfer is in the best interests of the Government,

(ii) That the proposed recipient agrees not to sell the records as records or documents, and

(iii) That the transfer will be made without cost to the U.S. Government;

(5) A certification that:

(i) The records contain no information the disclosure of which is prohibited by law or contrary to the public interest, and/or

(ii) That records proposed for transfer to a person or commercial business are directly pertinent to the custody or operations of properties acquired from the Government, and/or

(iii) That a foreign government desiring the records has an official interest in them.

(c) NARA will consider such request and determine whether the donation is in the public interest. Upon approval NARA will notify the requesting agency in writing. If NARA determines such a proposed donation is contrary to the public interest, the request will be denied and the agency will be notified that the records must be destroyed in accordance with the appropriate disposal authority.

Subpart E—Loan of Permanent and Unscheduled Records

SOURCE: 55 FR 27433, July 2, 1990, unless otherwise noted.

§ 1228.70 Authority.

The Archivist of the United States has authority over the placement of permanent records (44 U.S.C. 2107 and 2904). As unscheduled records have not been appraised, they will be deemed permanent for the purposes of this section and are also covered by this authority.

§ 1228.72 Approval.

No permanent or unscheduled records shall be loaned to non-Federal recipients without prior written approval from NARA. This authorization is not required for temporary loan of permanent and unscheduled records between Federal agencies.

§ 1228.74 Agency request.

The head of a Federal agency shall request approval for the loan by sending a letter to NARA (NI), Washington, DC 20408. The request will include:

(a) The name of the department or agency and subdivisions thereof, having custody of the records;

(b) The name and address of the proposed recipient of the records;

(c) A list containing:

(1) An identification by series or system of the records to be loaned,

(2) The inclusive dates of each series, and

(3) The NARA disposition job (SF 115) and item numbers covering the records, if any;

(d) A statement of the purpose and duration of the loan; and

(e) A statement specifying any restrictions on the use of the records and how these restrictions will be administered by the donee.

(f) A certification that the records will be stored according to the environmental specifications for archival records.

§ 1228.76 NARA action on request.

The Archivist of the United States shall be a signator on all formally executed loan agreements for permanent and unscheduled records. Such agreements shall not be implemented until the Archivist has signed. NARA will deny the request if the records should be transferred to the National Archives or if the loan would endanger the records or otherwise contravene the regulations in 36 CFR Chapter XII, Subchapter B. If the request is denied, the Archivist will notify the agency in writing and provide instructions for the disposition of the records.

Subpart F—Emergency Authorization to Destroy Records

§ 1228.90 General provisions.

Under certain conditions, records may be destroyed without regard to the provisions of subpart D.

§ 1228.92 Menaces to human life or health or to property.

(a) Agencies may destroy records that constitute a continuing menace to human health or life or to property (44 U.S.C. 3310). When such records are identified, the agency head shall notify NARA (NIR), specifying the nature of the records, their location and quantity, and the nature of the menace. If NARA concurs in the determination, the Archivist will direct the immediate destruction of the records or other appropriate means of destroying the recorded information. However, if the records are still or motion picture film on nitrocellulose base that has deteriorated to the extent described in paragraph (b) of this section, the head of the agency may follow the procedure therein provided.

(b) Whenever any radarscope, aerial, or other still or motion picture film on nitrocellulose base has deteriorated to the extent that it is soft and sticky, is emitting a noxious order, contains gas bubbles, or has retrograded into acrid powder, and the head of the agency having custody of it shall determine that it constitutes a menace to human health or life or to property, then the agency shall without prior authorization of the Archivist:

(1) Arrange for its destruction in a manner that will salvage its silver content if the silver content is of sufficient quantity and market value per troy ounce to warrant such salvage;

(2) Authorize burial in approved landfills, in the event the quantity is not sufficiently large to justify the salvaging of its silver content; or

(3) Effect other appropriate methods in the event that the methods provided in paragraph (b)(1) or (2) of this section are not feasible.

(c) These films should be removed from inhabited buildings as soon as possible.

(d) Within 30 days after the destruction of the film as provided in this section, the head of the agency who directed its destruction shall submit a written statement to NARA (NIR), Washington, DC 20408, describing the film and showing when, where, and how the destruction was accomplished.

(e) This report has been cleared in accordance with 41 CFR part 201-45 and assigned Interagency Report Control Number 1095-NAR-AR.

[45 FR 5705, Jan. 24, 1980. Redesignated and amended at 50 FR 15723, 15725, Apr. 19, 1985; further amended at 51 FR 23538, June 30, 1986; 55 FR 27433, July 2, 1990]

§ 1228.94 State of war or threatened war.

(a) Destruction of records outside the territorial limits of the continental United States is authorized whenever, during a state of war between the United States and any other nation or when hostile action by a foreign power appears imminent, the head of the agency that has custody of the records determines that their retention would be prejudicial to the interest of the United States, or that they occupy space urgently needed for military purposes and are without sufficient administrative, legal, research, or other value to warrant their continued preservation (44 U.S.C. 3311).

(b) Within 6 months after the destruction of any records under this authorization, a written statement describing the character of the records and showing when and where the disposal was accomplished shall be submitted to NARA (NIR) by the agency official who directed the disposal.

[55 FR 27433, July 2, 1990]

Subpart G—Damage to, Alienation, and Unauthorized Destruction of Records

§ 1228.100 Responsibilities.

(a) The Archivist of the United States and the heads of Federal agencies are responsible for preventing the alienation or unauthorized destruction of records, including all forms of mutilation. Records may not be removed from Federal custody or destroyed without regard to the provisions of agency records schedules (SF 115) approved by NARA or the General Records Schedules issued by NARA (44 U.S.C. 2905, 3106, and 3303a).

(b) The heads of Federal agencies are responsible for ensuring that all employees are aware of the provisions of the law relating to unauthorized destruction, alienation, or mutilation of records, and should direct that any such action be reported to them.

[55 FR 27433, July 2, 1990]

§ 1228.102 Criminal Penalties.

The maximum penalty for the willful and unlawful destruction, damage, or alienation of Federal records is a $2,000 fine, 3 years in prison, or both (18 U.S.C. 2071).

[55 FR 27434, July 2, 1990]

§ 1228.104 Reporting.

(a) The head of a Federal agency shall report any unlawful or accidental destruction, defacing, alteration, or removal of records in the custody of that agency to NARA (NIR) Washington, DC 20408. The report shall include:

(1) A complete description of the records with volume and dates if known;

(2) The office of origin;

(3) A statement of the exact circumstances surrounding the alienation, defacing, or destruction of the records;

(4) A statement of the safeguards established to prevent further loss of documentation; and

(5) When appropriate, details of the actions taken to salvage, retrieve, or reconstruct the records.

(b) This report has been cleared in accordance with 41 CFR part 201-45 and assigned Interagency Report Control Number 0285-NAR-AR.

(c) The Archivist of the United States will assist the head of the agency in contacting the Attorney General for the recovery of any unlawfully removed records.

[45 FR 5705, Jan. 24, 1980, as amended at 46 FR 60205, Dec. 9, 1981. Redesignated and amended at 50 FR 15723, 15725, Apr. 19, 1985; further amended at 51 FR 23538, June 30, 1986; 55 FR 27434, July 2, 1990]

§ 1228.106 Exclusions.

Private or personal files are not governed by these provisions. 36 CFR 1222.20(d) provides the legal definition of personal papers and prescribes standards for their maintenance.

[45 FR 5705, Jan. 24, 1980. Redesignated and amended at 50 FR 15723, 15725, Apr. 19, 1985]

Subpart H—Transfer of Records from the Custody of One Executive Agency to Another

§ 1228.120 Authority.

The Archivist of the United States will issue regulations governing the transfer of records from the custody of one executive agency to another (44 U.S.C. 2908).

§ 1228.122 Approval.

No records shall be transferred from the custody of one executive agency to another without the prior written approval of the National Archives and Records Administration except as provided in § 1228.136.

§ 1228.124 Agency request.

The head of any executive agency may request the transfer of records to or from his or her agency. Approval shall be requested by letter addressed to the National Archives (NIR), in which are included:

(a) A concise description of the records to be transferred, including the volume in cubic feet;

(b) A statement of the restrictions imposed on the use of records;

(c) A statement of the agencies and persons using the records and the purpose of this use;

(d) A statement of the current and proposed physical and organizational locations of the records; and

(e) A justification for the transfer including an explanation of why it is in the best interests of the Government.

[45 FR 5705, Jan. 24, 1980. Redesignated at 50 FR 15723, Apr. 19, 1985, and amended at 50 FR 26934, June 28, 1985; 55 FR 27434, July 2, 1990]

§ 1228.126 Agency concurrences.

Copies of the concurrence or nonconcurrence in the transfer by the heads of any agencies concerned shall be attached to the agency request.

§ 1228.128 Records of terminated agencies.

Transfers of records of executive agencies whose functions are terminated or are in process of liquidation are expressly subject to this part 1228 and no such transfers shall be made except in accordance with its provisions.

§ 1228.130 Equipment.

Records storage equipment shall be transferred with the records contained therein in accordance with arrangements previously agreed to by the agencies concerned.

§ 1228.132 Costs of transfers.

Approved transfers shall be made without reimbursement to the agency of original custody for any cost involved, except when this reimbursement is previously agreed to by the agencies concerned.

§ 1228.134 Restrictions on use of records.

Whenever any records that are transferred are subject to restrictions upon their use imposed under a statute, Executive order, or agency determination, these restrictions shall continue in effect after the transfer. Restrictions imposed by agency determination may be removed by agreement between the agencies concerned.

§ 1228.136 Exceptions.

Prior written approval of NARA is not required when:

(a) Records are transferred to Federal records centers or the National Archives in accordance with subparts I and J.

(b) Records are loaned for official use.

(c) The transfer of records or functions or both is required by statute, Executive Order, Presidential reorganization plan, or Treaty, or by specific determinations made thereunder.

(d) The records are transferred between two components of the same Executive department.

(e) Records accessioned by the National Archives, later found to lack sufficient value for continued retention by the National Archives are governed exclusively for further disposition in accordance with § 1228.200.

[55 FR 27434, July 2, 1990]

Subpart I—Transfer of Records to Federal Records Centers

§ 1228.150 Authority.

The Archivist of the United States is authorized to establish, maintain, and operate records centers for the storage, processing, and servicing of records for Federal agencies (44 U.S.C. 2907). These centers are known as Federal records centers. In addition, a National Personnel Records Center is maintained for designated records of the Department of Defense and the Office of Personnel Management and for other designated records pertaining to former Federal civilian employees. A list of these records centers follows:

Areas served	Federal records center
District of Columbia, Maryland, West Virginia, and Virginia (except U.S. Court records).	Washington National Records Center, Washington, DC 20409.
Designated records of the Military Departments and the U.S. Coast Guard.	National Personnel Records Center (Military Personnel Records), 9700 Page Boulevard, St. Louis, MO 63132.
The entire Federal Government personnel records of seperated Federal employees; medical and pay records of all Federal employees; designated medical records of Army and Air Force military personnel and their dependents; and records of agencies in the St. Louis area (Missouri only), of Scott AFB, IL, and of the Memphis Service Center, Internal Revenue Service.	National Personnel Records Center (Civilian Personnel Records), 111 Winnebego Street, St. Louis, MO 63118.
Maine, Vermont, New Hampshire, Massachusetts, Connecticut, and Rhode Island.	Federal Records Center, 380 Trapelo Road, Waltham, MA 02154.
New York, New Jersey, Puerto Rico, and the Virgin Islands.	Federal Records Center, Military Ocean Terminal, Building 22, Bayonne, NJ 07002.
Delaware, Pennsylvania, and U.S. court records for Maryland, Virginia, and West Virginia.	Federal Records Center, 5000 Wissahickon Ave., Philadelphia PA 19144.
North Carolina, South Carolina, Tennessee, Mississippi, Alabama, Georgia, Florida, and Kentucky.	Federal Records Center, 1557 St. Joseph Ave., East Point, GA 30044.
Illinois, Wisconsin, Minnesota, and U.S. court records for Indiana, Michigan, and Ohio.	Federal Records Center, 7358 South Pulaski Rd., Chicago, IL 60629.
Indiana, Michigan, and Ohio except for U.S. court records.	Federal Records Center, 3150 Bertwynn Drive, Dayton, OH 45439.
Kansas, Iowa, Nebraska, and Missouri except greater St. Louis area.	Federal Records Center, 2312 East Bannister Rd., Kansas City, MO 64131.
Texas, Oklahoma, Arkansas, Louisiana, and New Mexico.	Federal Records Center, P.O. Box 6216, Forth Worth, TX 76115.
Colorado, Wyoming, Utah, Montana, North Dakota, and South Dakota.	Federal Records Center, Bldg. 48, Denver Federal Center, P.O. Box 25307, Denver, CO 80225.
Nevada except Clark County, California except southern California, American Samoa.	Federal Records Center, 1000 Commodore Drive, San Bruno, CA 94066.
Arizona; Clark County, Nevada, and southern California (counties of San Luis Obispo, Kern, San Bernadino, Santa Barbara, Ventura, Orange, Los Angeles, Riverside, Inyo, Imperial, and San Diego).	Federal Records Center, 24000 Avila Road, Laguna Neguel, CA 92677.
Washington, Oregon, Idaho, Alaska, Hawaii, and Pacific Ocean area (except American Samoa).	Federal Records Center, 6125 Sand Point Way, Seattle, WA 98115.

[45 FR 5705, Jan. 24, 1980. Redesignated and amended at 50 FR 15723, 15725, Apr. 19, 1985]

§ 1228.152 Procedures for transfers to Federal records centers.

This section prescribes general procedures for the transfer of records to Federal records centers. For greater detail consult the NARA Records Management Handbook, Federal Archives and Records Centers (NSN 7610-00-298-6904).

(a) Federal records centers will accept for transfer any records of Federal agencies, subject to the following conditions:

(1) The records are properly scheduled. If the records are not scheduled, or if the records are scheduled for final disposition after the occurrence of an event at some unspecified future time (contingent), an exception to this regulation must be obtained by submitting a request, in writing, to the National Archives (NC), Washington, DC 20408.

(i) Requests for exceptions for unscheduled records will be considered only if an SF 115 has been submitted and accepted in accordance with the provisions of subpart C. The request must include information on the volume of the records and the anticipated reference activity.

(ii) Requests for exceptions for contingent records must include the series title, records disposition schedule and item numbers, approximate volume accumulated annually, periodic review interval for disposal and justification for retirement to a Federal records center.

(2) The records are not authorized for immediate disposal and transportation costs are not in excess of the resulting savings.

(3) Facilities for storing and providing reference on the records are available.

(b) Priority will be given to the removal of records from office space, from space convertible to office use, from leased space, and from filing equipment that can be reused.

(c) Inquiries concerning the appropriateness of transfers may be sent to the Director of the Federal records center serving the area in which the records are located. Inquiries shall specify the nature and quantity of the records proposed for transfer.

(d) Tranfers of records on an agencywide basis may be initiated by submitting a request to National Archives (NC), Washington, DC 20408. Requests shall specify the nature and quantity of the records proposed for transfer.

(e) Transfers to Federal records centers shall be preceded by the submission of Standard Form 135, Records Transmittal and Receipt. A separate accession number is required for each series of records listed on the Standard Form 135. An accession consists of records in one series that have the same disposition authority and disposition date and that will be shelved in contiguous space in the records center. Agencies shall prepare an original and three copies of the Standard Form 135, retain one copy for filing purposes, and send the original and two copies to the Federal records center to arrive at least 2 weeks (10 workdays) before the desired date of the records shipment. The records center will review the Standard Form 135 for completeness to determine the appropriateness of the transfer. If the transfer is approved, the records center may annotate block 65 of the Standard Form 135 with Federal records center shelf location where each accession will be stored. The Federal records center returns two copies of the Standard Form 135 to the agency indicating that the records may be transferred. One of these copies shall be placed in the first carton of the shipment when the records are shipped to the center.

(f) The physical transfer of records to a records center should be accomplished as soon as possible after the agency has received the annotated copy of the Standard Form 135. If NARA has not received the shipment within 90 days after transmittal of the annotated SF 135 to the agency (120 days for agencies located outside the continental United States), it will return the SF 135 to the agency. The agency will then have to resubmit the accessioning paperwork.

(g) Upon receipt of the records shipment at the center, the cartons are matched against the copy of the Standard Form 135 submitted with the transfer. That copy is signed by center officials and returned to the agency for its files. Any changes in location designation will be noted on this receipt copy before it is returned to the agency. This is the only receipt the center will provide for transferred material, including records having security classifications up to and including "Secret."

[45 FR 5705, Jan. 24, 1980, as amended at 46 FR 60205, Dec. 9, 1981; 47 FR 11281, Mar. 16, 1982; 48 FR 2776, Jan. 21, 1983; 49 FR 33253, Aug. 22, 1984. Redesignated and amended at 50 FR 15723, 15725, Apr. 19, 1985; 50 FR 26934, June 28, 1985; 54 FR 3778, Jan. 26, 1989; 55 FR 27434, July 2, 1990]

§ 1228.154 Transfers to the National Personnel Records Center (NPRC).

General Records Schedules 1 and 2 specify that certain Federal civilian personnel, medical, and pay records must be centrally stored at the National Personnel Records Center (Civilian Personnel Records), 111 Winnebago Street, St. Louis, Missouri 63118.

(a) The following four types of records are so specified:

(1) Official personnel folders of separated Federal civilian employees;

(2) Service record cards of employees who separated or transferred on or before December 31, 1947;

(3) Audited individual earnings and pay cards and comprehensive payrolls; and

(4) Employee medical folders of separated Federal civilian employees.

(b) The official personnel folder (OPF) and the employee medical folder (EMF) must be forwarded to the National Personnel Records Center at the same time. Only x rays that will easily fit inside the EMF without folding will be accepted by the Center. X rays over 11¾″×10″ in size that are required for long-term retention must be retained by the agency. The agency must place a notice in the EMF indicating how a subsequent Federal employer may obtain the oversized x rays. The OPF and the EMF must be labeled in the upper right corner to identify the employee by name (last name first), date of birth, and social security number only. Temporary records must be removed from the folders before transmittal. Agencies must make every effort to locate all long-term documents required to be part of the folders and to file them before the folders are transferred. Small quantities of folders (OPF's and EMF's) must be mailed in a sealed envelope. Larger quantities must be mailed in a carton. No advance notification of transmittal or SF 135, Records Transmittal and Receipt, is required from the transferring agency, and no receipt will be furnished by the Center.

(c) A cover letter must accompany loose personnel or medical documents forwarded for interfiling in an OPF or EMF previously sent to the Center. Only those documents required for long-term retention may be forwarded for interfiling. Each document must contain the former employee's current name and name under which formerly employed, if different; date of birth; social security number; and date of separation. Letters accompanying loose personnel documents must clearly identify the agency personnel office and address. Letters accompanying loose medical documents must include the name and address of the agency's designated medical records manager (i.e., medical, health, safety, or personnel officer or other designee). Medical documents required to be part of the EMF may not be sent for interfiling in agency accessions retired prior to September 1, 1984. Such documents must be placed in an EMF and sent to the National Personnel Records Center in accordance with the instructions in paragraph (b) of this section if the employee has left Federal service.

(d) Transfer of fiscal records must be in accordance with the procedures outlined in § 1228.152.

(e) Standard Form 127, Request for Official Personnel Folder (Separated Employee), must be used by agencies when requesting transmission of personnel folders of separated employees. Standard Form 184, Request for Employee Medical Folder (Separated Employee), must be used when requesting medical folders. The name and address of the agency's designated medical records manager must be shown on the request form. Use of the appropriate request form will help ensure prompt transmission of the desired folder. Each request must be submitted in duplicate.

(f) Occupational medical records of separated Federal civilian employees who were not in positions subject to civil service rules and regulations may be retired if the records are properly scheduled and if access procedures are furnished for use by the Center.

(1) It is recommended that a folder similar to the SF 66-D, Employee Medical Folder, but different in color, be used for medical records of non-civil-service employees.

(2) If the records are not scheduled, an exception may be obtained by submitting a request to the Assistant Archivist for Federal Records Centers, National Archives and Records Administration (NC), Washington, DC 20408. The request must identify the location(s) of records and the volume proposed for transfer. The request will be considered only if an SF 115, Request for Records Disposition Authority, has been received by NARA's Records Appraisal and Disposition Division (NIR).

(g) Medical records of non-Federal employees (e.g., contractor employees and student volunteers) must be disposed of in accordance with the approved agency disposition schedule.

[53 FR 13408, Apr. 25, 1988]

§ 1228.156 Transferring vital records to Federal records centers.

NARA provides for the storage and protection of rights and interests vital records under the dispersed concept as described in Part 1236. The facilities of all NARA Federal records centers (FRC) without regard to geographical location are now available for agencies desiring to store these records. Each NARA Federal records center has areas with suitable temperature and humidity controls allowing the safe storage of paper records, magnetic tape, and photographic film. Agencies may make arrangements through the National Archives (NC), Washington, DC 20408, for the transfer of indispensable vital records to these depositories and for their use.

§ 1228.160 Release of equipment.

File equipment received with the transfer of records to a Federal records center will normally be disposed of in accordance with applicable excess personal property regulations. An agency desiring return of the equipment should make this request before transfer of the records to the records center.

§ 1228.162 Use of records in Federal records centers.

Each agency record which is accepted by the Archivist of the United States for storage, processing, and servicing in accordance with 44 U.S.C. 3103 shall, for the purposes of this section, be considered to be maintained by the agency which deposited the record. The Archivist of the United States will not disclose the record except to the agency which maintains the record, or under rules established by that agency which are not inconsistent with existing laws.

(a) Standard Form 180, Request Pertaining to Military Records, must be used by Federal agencies to obtain information from military service records in the National Personnel Records Center (Military Personnel Records). Agencies may furnish copies of that form to the public to aid in inquiries. Members of the public and non-governmental organizations also may obtain copies of Standard Form 180 by submitting a written request to the National Personnel Records Center (Military Personnel Records), 9700 Page Boulevard, St. Louis, Missouri 63132.

(b) Requests for Federal civilian personnel files and medical files from the National Personnel Records Center must be made in accordance with § 1228.154. Requests for medical records retired to other Federal Records Centers prior to September 1, 1984, must be made on Optional Form 11, Reference Request—Federal Records Centers. The request must include the name and address of the agency's designated medical records manager.

(c) For any other requests, agencies should use Optional Form 11, Reference Request—Federal Records Centers, or a form jointly designated by that agency and NARA.

[45 FR 5707, Jan. 24, 1980. Redesignated at 50 FR 15723, Apr. 19, 1985 and amended at 53 FR 13409, Apr. 25, 1988]

§ 1228.164 Disposal clearances for records in Federal records centers.

(a) Records at the National Personnel Records Center covered by General Records Schedules 1 and 2 will be destroyed in accordance with those schedules without further agency clearance.

(b) Contingent records (records of Federal agencies scheduled for destruction after occurrence of an event at some unspecified time in the future) held by Federal records centers will be destroyed upon receipt of agency concurrence in response to NA Form 13000, Agency Review for Contingent Disposal, or other written concurrence. If the agency does not respond to the review notice within 90 calendar days, the records center may return the records to the agency and reject future transfers of that records series.

(c) Other records of Federal agencies held by Federal records centers will be destroyed with the concurrence of the agency concerned by use of NA Form 13001, Notice of Intent to Destroy Records, or other written concurrence for each disposal action. If an agency is notified of the eligibility of its records for disposal and the agency fails to respond to this notification within 90 calendar days, the records will be destroyed in accordance with the appropriate disposition authority. If an agency does not concur in the scheduled destruction of an accession, the agency may request extended retention of the records by submitting written justification, including a new disposal date, within 90 days to the records center director.

[45 FR 5705, Jan. 24, 1980, as amended at 49 FR 6371, Feb. 21, 1984; 49 FR 36502, Sept. 18, 1984. Redesignated and amended at 50 FR 15723, 15725, Apr. 19, 1985; 55 FR 27434, July 2, 1990]

Subpart J—Transfer of Records to the National Archives

§ 1228.180 Authority.

(a) *Transfer of records.* The Archivist of the United States is authorized by 44 U.S.C. 2107 to:

(1) Accept for deposit with the National Archives of the United States the records of a Federal agency or of the Congress determined by the Archivist of the United States to have sufficient historical or other value to warrant their continued preservation by the U.S. Government; and

(2) Direct and effect the transfer to the National Archives of the United States of Federal agency records that have been in existence for more than 30 years and that have been determined by the Archivist of the United States to have sufficient historical or other value to warrant their continued preservation by the U.S. Government, unless the head of the agency which has custody of the records certifies in writing to the Archivist that the records must be retained in agency custody for use in the conduct of the regular current business of the agency. Records that are scheduled in a NARA-approved records schedule to be transferred to the National Archives of the United States after a specified period of time are subject to the certification requirement only if the records are not transferred as scheduled.

(i) In order to certify that records must be retained for the conduct of regular current business, an agency should consider the following factors:

(A) Character of use (to be retained by an agency, records should be used for the normal routine business of the agency at the time of certification);

(B) Frequency of use (to be retained by an agency, records should be used more than one time per month per file unit); and,

(C) Preservation of the records (to be retained by an agency, permanently valuable records should be preserved in accordance with NARA guidelines).

(ii) The written certification of need of a series of 30-year-old records for current agency business must:

(A) Include a comprehensive description and location of records to be retained;

(B) Cite the NARA approved authority for the disposition of the records if scheduled (SF 115 item number);

(C) Describe the current business for which the records are required;

(D) Estimate the length of time the records will be needed by the agency for current business (if no date is provided by the agency, approved certification requests will be effective for a maximum of five years);

(E) Explain why the current needs of the agency cannot be met by the services NARA provides for records deposited with the National Archives of the United States; and,

(F) If the records are being retained to enable the agency to provide routine public reference, cite the statute authorizing this agency activity.

(iii) NARA will not accept an agency certification that a specific body of records over 30 years old, regardless of physical form or characteristics, is being used for the "conduct of the regular current business," if that agency is retaining such records primarily to:

(A) Provide to persons outside the agency access which can be provided by NARA; or

(B) Function as an agency archives, unless specifically authorized by statute or NARA.

(b) *Custody of records transferred.* Under 44 U.S.C. 2108, the Archivist of the United States is responsible for the custody, use, and withdrawal of records transferred to him.

(c) *Transferred records subject to statutory or other restrictions.* (1) When records, the use of which is subject to statutory limitations and restrictions, are so transferred, permissive and restrictive statutory provisions concerning the examination and use of records applicable to the head of the transferring agency are applicable to the Archivist of the United States and the employees of the National Archives.

(2) Before records are transferred to the National Archives, the head of an agency may state in writing restrictions that appear to him or her to be necessary or desirable in the public interest on the use or examination of records. The head of an agency must, however, justify and cite the statute or Freedom of Information Act exemption (5 U.S.C. 552(b)) that authorizes placing restrictions on the use or examination of records being considered for transfer. If the Archivist agrees, restrictions will be placed on the records.

(i) *For records less than 30 years old.* Unless required by law, the Archivist will not remove or relax restrictions placed upon records less than 30 years old without the concurrence in writing of the head of the agency from which the material was transferred or of his or her successor, if any. If the transferring agency has been terminated and there is no successor in function, the Archivist is authorized to relax, remove or impose restrictions in the public interest.

(ii) *For records 30 or more years old.* After the records have been in existence for 30 years or more, statutory or other restrictions referred to in this section shall expire unless the Archivist determines, after consulting with the head of the transferring agency, that the restrictions shall remain in force for a longer period. Such restrictions may be extended by the Archivist beyond 30 years only for reasons consistent with standards established in relevant statutory law, including the Freedom of Information Act (5 U.S.C. 552). Restrictions are systematically extended beyond 30 years where agencies advise NARA on the transferring document (now a Standard Form 258) that a particular category of records requires such protection. NARA has identified specific categories of records, including classified information and information that would invade the privacy of an individual, which may require extended protection beyond 30 years. *See* 36 CFR part 1256.

[54 FR 2111, Jan. 19, 1989]

§ 1228.182 Types of records to be transferred.

(a) *General.* Records that have been determined by the Archivist of the United States to have sufficient historical or other value to warrant preservation; i.e., appraised by NARA and identified as permanent records, are normally transferred to the National Archives of the United States when:

(1) They are 30 years old; or

(2) At any age when:

(i) The originating agency no longer needs to use the records for the purpose for which they were created or in its regular current business; or

(ii) Agency needs will be satisfied by use of the records in NARA research rooms or by copies of the records; and restrictions on the use of records are acceptable to NARA, do not absolutely preclude use of the records by the public, and do not violate the Freedom of Information Act (5 U.S.C. 552). Records appraised as permanent that are not yet eligible for transfer because of agency needs or restrictions may be stored in a Federal records center pending transfer. (See Subpart H.)

(b) *Archival depositories.* NARA reserves the right to determine and change the archival depository in which records transferred to the National Archives of the United States are stored. Such determinations are normally made as follows:

(1) *Presidential libraries.* Records appropriate for preservation in a Presidential library because they can most effectively be used in conjunction with materials already in that library.

(2) *National Archives Field Branches.* (i) Records of field offices of Federal agencies, except for records of agency field offices located in the Washington, DC area;

(ii) Records including both headquarters and field office records of regional agencies such as the Tennessee Valley Authority; and

(iii) Other records determined by NARA to be of primarily regional or local interest.

(3) *National Archives Building and other Washington, D.C. area depositories.* (i) Records of Washington, DC area field offices of Federal agencies and other records relating to the District of Columbia and the Washington, DC area, such as records of the National Capital Planning Commission;

(ii) All other records not deposited in a Presidential library or National Archives Field Branches.

[42 FR 57315, Nov. 2, 1977, as amended at 46 FR 60206, Dec. 9, 1981. Redesignated and amended at 50 FR 15723, 15725, Apr. 19, 1985]

§ 1228.184 Audiovisual records.

The following policies shall govern the transfer of audiovisual records to the National Archives:

(a) *Motion pictures.* The following copies shall be considered necessary for the preservation, duplication, and reference service of motion pictures:

(1) Agency-sponsored motion picture films for distribution (informational films):

(i) Original negative or color original plus separate optical sound track; and

(ii) Intermediate master positive or duplicate negative plus optical sound track; and

(iii) Sound projection print.

(2) Agency motion picture films made for internal use (program films):

(i) Original negative or color original plus sound, and

(ii) Projection print.

(3) Agency acquired motion picture films: Two projection prints.

(4) Unedited outtakes and trims (the discards of film productions) may be considered for deposit in the National Archives if they are properly arranged, labeled, and described and show unstaged, unrehearsed events of historical interest or historically significant phenomena. The following elements should be included:

(i) Original negative or color original; and

(ii) Work print.

(b) *Still pictures.* The following elements are necessary for the preservation, duplication, and reference service of each pictorial image:

(1) For black and white photographs, an original negative and a captioned print. If the original negative is nitrate or glass, a duplicate negative is also needed.

(2) For color photographs, the original color transparency or color negative, a captioned print, and an internegative if one exists.

(3) For slide sets, the original and a reference set, and the related audio recording and script if one exists.

(4) For other pictorial records such as posters, original artwork, and filmstrips, the original and a reference print.

(c) *Sound recordings.* The following types of audio documents are necessary for the preservation, duplication, and reference service of sound recordings:

(1) For conventional, mass-produced, or multiple-copy disc recordings, the master tape, the matrix or stamper of each sound recording, and a disc pressing of each recording.

(2) For magnetic sound recordings usually on audio tape (reel-to-reel, casette, or cartridge), the original tape or the earliest generation of the recording available and a "dubbing" if one has been made.

(d) *Video recordings.* The original or the earliest generation of the video recording is necessary for the preservation, duplication, and reference service of this medium. A kinescope of the recording may be substituted.

(e) *Finding aids and production documentation.* The following records shall be transferred to the National Archives with the audiovisual records to which they pertain:

(1) Existing finding aids such as data sheets, shot lists, continuities, review sheets, catalogs, indexes, lists of captions, and other textual documentation that are necessary or helpful for the proper identification, retrieval, and use of the audiovisual records; and

(2) Production case files or similar files that include copies of production contracts, scripts, transcripts, and appropriate documentation bearing on the origin, acquisition, release, and ownership of the production.

[42 FR 57315, Nov. 2, 1977. Redesignated at 50 FR 15723, Apr. 19, 1985]

§ 1228.186 Cartographic and architectural records.

The following classes of cartographic and architectural records when they are no longer needed for purposes of current administration may be offered for appraisal and, if accepted, for direct transfer to the National Archives.

(a) *Maps and charts.* (1) Manuscript maps; printed and processed maps on which manuscript changes, additions, or annotations have been made for record purposes or which bear manuscript signatures to indicate official approval; and single printed or processed maps that have been attached to or interfiled with other documents of a record character or in any way made an integral part of a record.

(2) Master sets of printed or processed maps in the custody of the agency by which they were issued. Such master sets should be kept segregated from the stock of maps held for distribution and from maps received from other agencies. A master set should include one copy of each edition of a printed or processed map issued.

(3) Computer-related and computer-plotted maps that cannot be reproduced by the National Archives because of destruction of the magnetic tapes or other stored data or because of the unavailability of ADP equipment.

(4) Index maps, card indexes, lists, catalogs, or other finding aids that may be helpful in using the maps transferred.

(5) Records related to preparing, compiling, editing, or printing maps, such as manuscript field notebooks of surveys, triangulation and other geodetic computations, and project folders containing specifications to be followed and appraisals of source materials to be used.

(b) *Aerial photography and remote sensing imagery.* (1) Vertical and oblique negative aerial film, conventional aircraft.

(2) Annotated copy negatives, internegatives, rectified negatives, and glass plate negatives from vertical and oblique aerial film, conventional aircraft.

(3) Annotated prints from aerial film, conventional aircraft.

(4) Infrared, ultraviolet, multispectral (multiband), video, imagery radar, and related tapes, converted to a film base.

(5) Indexes and other finding aids in the form of photo mosaics, flight line indexes, coded grids, and coordinate grids.

(c) *Architectural and related engineering drawings.* (1) Design drawings, preliminary and presentation drawings, and models which document the evolution of the design of a building or structure.

(2) Master sets of drawings which document the condition of a building or structure in terms of its initial construction and subsequent alterations. This category includes final working drawings, "as-built" drawings, shop drawings, and repair and alteration drawings.

(3) Drawings of repetitive or standard details of one or more buildings or structures.

(4) "Measured" drawings of existing buildings and original or photocopies of drawings reviewed for approval.

(5) Related finding aids and specifications to be followed.

[42 FR 57315, Nov. 2, 1977. Redesignated at 50 FR 15723, Apr. 19, 1985]

§ 1228.188 Machine-readable records.

(a) *Magnetic tape.* Computer magnetic tape is a fragile medium, highly susceptible to the generation of error by improper care and handling. To ensure that permanently valuable information stored on magnetic tape is preserved, Federal agencies should schedule files for disposition as soon as possible after the tapes are written. When NARA has determined that a file is worthy of preservation, the agency should transfer the file to the National Archives as soon as it beomes inactive or whenever the agency cannot provide proper care and handling of the tapes (see part 1234 of this chapter) to guarantee the preservation of the information they contain. The tapes to be transferred to the National Archives shall be on one-half inch 7 or 9 track tape reels, written in ASCII or EBCDIC, with all extraneous control characters removed from the data (except record length indicators for variable length records, or marks designating a datum, word, field, block, or file), blocked no higher than 30,000 bytes per block, at 800, 1600, or 6250 bpi. The tapes on which the data are recorded shall be new or recertified tapes (see part 1234 of this chapter) which have been passed over a tape cleaner before writing and shall be rewound under controlled tension.

(b) *Other magnetic media.* When a machine-readable file that has been designated for preservation by NARA is maintained on a direct access storage device, the file shall be written on new or recertified one-half inch 7 or 9 track tapes, written in ASCII or EBCDIC, with all extraneous control characters removed from the data (except record length indicators for variable length records, or marks designating a datum, word, field, block, or file), blocked no higher than 30,000 bytes per block, at 800, 1600, or 6250 bpi. This copy shall be transferred to the National Archives.

(c) *Documentation.* Documentation adequate for servicing and interpreting machine-readable records that have been designated for preservation by NARA shall be transferred with them. This documentation shall include, but not necessarily be limited to completed Standard Form 277, Computer Magnetic Tape File Properties, or its equivalent. Where it has been necessary to strip data of extraneous control characters (see paragraphs (a) and (b) of this section), the codebook specifications defining the data elements and their values must match the new format of the data. Guidelines for determining adequate documentation may be obtained from the Office of Records Administration (mailing address: National Archives (NI), Washington, DC 20408).

[50 FR 26935, June 28, 1985; 50 FR 27951, July 9, 1985]

§ 1228.190 Transfer of records.

(a) *Policy.* Federal records will be transferred to the National Archives of the United States only if they are listed as permanent on an SF 115, Request for Records Disposition Authority approved by NARA since May 14, 1973, or if they are accretions (continuations of series already accessioned) to holdings of the National Archives. Transfers are initiated by submission of an SF 258, Request to Transfer, Approval and Receipt of Records to the National Archives of the United States.

(b) *Initiation of request to transfer*—(1) *Nonrecurring series scheduled for immediate transfer.* NARA will provide the SF 258 for records scheduled for immediate transfer on an SF 115 approved after September 30, 1987. NARA will send the SF 258 to the agency with the approved SF 115. The agency will sign and return the SF 258 to the Office of the National Archives (NN), National Archives and Records Administration, Washington DC 20408, or to the appropriate National Archives Field Branch if so provided on the SF 115.

(2) *Future transfers of series in agency space.* Sixty days before the scheduled date of transfer to the National Archives of the United States, the transferring agency shall submit an SF 258 to the Office of the National Archives (NN) or to the appropriate National Archives Field Branch if so provided on the SF 115. NARA will determine whether specified restrictions are acceptable and whether adequate space and equipment are available.

(3) *Future transfers of series in Federal Records Centers.* NARA will initiate the SF 258 and send it to the agency 90 days before the scheduled transfer date. The agency shall approve or disapprove the SF 258 and send it to the address indicated on the form 60 days before the scheduled transfer date.

(c) *Physical and legal transfer.* The Office of the National Archives will provide shipping or delivery instructions to the agency or Federal Records Center. Legal custody of the records passes to NARA when the NARA official signs the SF 258 acknowledging receipt of the records.

[52 FR 34134, Sept. 9, 1987]

§ 1228.194 Records subject to the Privacy Act of 1974.

Transfers of records constituting systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a) shall be accompanied by the most recent agency privacy notice covering the records.

[42 FR 57316, Nov. 2, 1977. Redesignated at 50 FR 15723, Apr. 19, 1985]

§ 1228.196 Release of equipment.

Equipment received with the transfer of records to the National Archives will, when emptied, normally be retained by NARA or disposed of in accordance with applicable excess property regulations, unless the transferring agency requests its return.

[42 FR 57316, Nov. 2, 1977. Redesignated at 50 FR 15723, Apr. 19, 1985]

§ 1228.198 Use of records transferred to the National Archives.

(a) In accordance with 44 U.S.C. 2108, restrictions lawfully imposed on the use of transferred records will be observed and enforced by NARA to the extent that they do not violate 5 U.S.C. 552. Statutory and other restrictions on transferred records remain in force until the records have been in existence for 30 years, unless the Archivist of the United States, after consulting with the head of the transferring agency, determines that the restrictions shall remain in force for a longer period of time for specific bodies of records. The regulations in Subchapters B and C of this title, insofar as they relate to the use of records in the National Archives or in a Federal records center, apply to official use of the records by Federal agencies as well as to the public.

(b) In instances of demonstrated need, and subject to any restrictions on their use, records deposited in the National Archives may be borrowed for official use outside the building in which they are housed by Federal agencies and the Congress, subject to the following conditions:

(1) Documents of high intrinsic value shall not be removed from the building in which they are housed except with the written approval of the Archivist;

(2) Records will not be loaned to enable agencies to answer routine reference inquiries from other agencies or the public;

(3) Records in fragile condition, or otherwise deteriorated to an extent that further handling will endanger them, will not be loaned;

(4) Each official who borrows records shall provide a receipt for them at the time they are delivered, and he shall assume responsibility for their prompt return upon the expiration of the time for which they are borrowed; and

(5) Each official who borrows computer magnetic tapes shall assume responsibility for proper care and handling of the tapes.

[42 FR 57316, Nov. 2, 1977. Redesignated at 50 FR 15723, Apr. 19, 1985, and amended at 50 FR 26935, June 28, 1985]

§ 1228.200 Disposal clearances.

No records of a Federal agency still in existence will be disposed of by NARA except with the concurrence of the agency concerned or as authorized on Standard Form 258, Request to Transfer—Approval and Receipt of Records to National Archives of the United States.

[42 FR 57316, Nov. 2, 1977. Redesignated at 50 FR 15723, Apr. 19, 1985]

Subpart K—Agency Records Centers

§ 1228.220 Authority.

Federal agencies are authorized to maintain and operate records centers for the storage, servicing, and disposal of their own noncurrent records when these centers are approved by the Archivist (44 U.S.C. 3103). Centers operated by Federal agencies are referred to in this Subchapter B as "agency records centers."

[47 FR 34787, Aug. 11, 1982. Redesignated at 50 FR 15723, Apr. 19, 1985]

§ 1228.222 Facility standards for agency records centers.

Inspection of agency records centers by NARA shall include an evaluation of the agency's compliance with the facility standards for records centers specified below:

(a) *General.* (1) The facility should be a single-story building, at or above grade level, constructed with noncombustible materials.

(2) A floor load limit shall be established for the records storage area by a structural engineer. The allowable load limit shall be posted in a conspicuous place and shall not be exceeded.

(3) Steel shelving or other open-shelf records storage equipment shall be braced to prevent collapse under full load in accordance with Federal Specifications AS-S-271 or AA-S-1047. The records storage height shall not exceed 15 feet. Agencies operating records centers which have storage heights in excess of 15 feet may apply in writing to the National Archives (NC), Washington, DC 20408, for an exemption to this requirement. If a request for exemption is denied, agencies will be required to remodel existing centers to meet the 15-foot requirement.

(4) The area occupied by the center shall be equipped with an anti-intrusion alarm system, or equivalent, to protect against unlawful entry after hours.

(b) *Fire safety.* (1) All walls separating records areas from each other and from other storage areas in the building shall be 4-hour fire resistant. The records areas shall not exceed 40,000 square feet each. Two-hour-rated firewalls shall be provided between the records storage areas and other auxiliary spaces. Penetrations in the walls shall not reduce the specified fire resistance ratings.

(2) Openings in firewalls separating records storage areas shall be avoided as far as possible but if openings are necessary they shall be protected by self-closing or automatic Class A firedoors, or equivalent, on each side of the wall openings.

(3) Roof support structures that cross or penetrate firewalls shall be cut and supported independently on each side of the firewall.

(4) If firewalls are erected with expansion joints, the joints shall be protected to their full height with No. 10 iron astragals lapping the opening on each side of the firewall.

(5) Building columns in the records storage areas shall be 2-hour fire resistant from the floor to the point where they meet the ceiling or roof framing system.

(6) Automatic roof vents shall not be designed into new or existing buildings.

(7) Where lightweight steel roof or floor supporting members (e.g., bar joists having top chords with angles 2 by 1½ inches or smaller, ¼-inch thick or smaller, and 13⁄16-inch or smaller web diameters) are present, they shall be protected either by applying a 10 minute fire resistive coating to the top chords of the joists, or by retrofitting the sprinkler system with large drop sprinkler heads. Retrofitting may require modifications to the piping system to ensure that adequate water capacity and pressure are provided in

the areas to be protected with these large drop sprinkler heads.

(8) Furnace or boiler rooms shall be separated from records storage areas by 4-hour-rated firewalls, with no openings directly from these rooms to the records storage areas. No open flame (oil or gas) equipment or unit heaters shall be installed or used in any records storage area.

(9) The arrangement of the records storage equipment shall be such that there shall be no dead-end aisles. Equipment rows running perpendicular to the wall shall terminate at least 18 inches from the wall.

(10) No oil-type electrical transformers, regardless of size, except thermally protected devices included in fluorescent light ballasts, shall be installed in the records storage areas. All electrical wiring shall be in metal conduit, except that armored cable may be used where flexible connections to light fixtures are required.

(11) All records storage and adjoining areas shall be protected by automatic wetpipe sprinklers. Automatic sprinklers are specified herein because they provide the most effective fire protection for high-piled storage of paper records on open-type shelving.

NOTE: Other automatic extinguishing systems or protective measures may provide an acceptable level of fire-loss risk depending upon specific conditions, such as type or importance of the records, the type and stacking height of the storage equipment used; or how the space is designed, controlled, and operated (as well as its value). Agencies may elect to use alternate standards, as appropriate to their needs, such as those issued by the National Fire Protection Association (see NFPA 13, NFPA 231, NFPA 231C, NFPA 232, and NFPA 232AM). Also, agencies may consult the Chief of the Accident and Fire Prevention Branch in the GSA regional office about these or other systems and protective measures.

(12) The sprinkler system shall be rated at 286 degrees Fahrenheit and designed to provide 0.30 gpm per square foot for the most remote 1,500 square feet of floor area with a minimum flowing pressure of 7.0 psi at the most remote sprinkler head. Installation shall be in accordance with Standard Number 13 of the National Fire Protection Association.

(13) Maximum spacing of the sprinkler heads shall be on a 10-foot grid and the positioning of the heads shall provide complete, unobstructed coverage, with a clearance of not less than 18 inches from the top of the highest stored materials.

(14) The sprinkler system shall be equipped with a water-flow alarm connected to a continuously staffed fire department or central station, with responsibility for immediate response.

(15) A manual fire alarm system shall be provided with central station service or other automatic means of notifying the municipal fire department. A manual alarm pull station shall be located adjacent to each exit. Supplemental manual alarm stations are permitted within the records storage areas.

(16) All water cutoff valves in the sprinkler system shall be equipped with automatic closure alarm connected to a continously staffed station, with responsibility for immediate response.

(17) A dependable water supply free of interruption shall be provided. This normally requires a backup supply system having sufficient pressure and capacity to meet both firehose and sprinkler requirements for 2 hours.

(18) Interior firehose stations equipped with a 1½-inch diameter hose shall be provided in the records storage areas, enabling any point in the records storage area to be reached by a 50-foot hose stream from a 100-foot hose lay. The fire hoses shall not be provided, however, unless training in the handling and use of small hoses, protective gear, and breathing equipment has been given, and these protective items are available for brigade members.

(19) In addition to the designed sprinkler flow demand, 500 gpm shall be provided for hose stream demand. The hose stream demand shall be calculated into the system at the base of the main sprinkler riser.

(20) Fire hydrants should be located within 250 feet of each exterior entrance or other access to the records center that could be used by firefighters. All hydrants should be at least 50 feet away from the building walls and

adjacent to a roadway usable by fire apparatus.

(21) Portable water-type fire extinguishers (2½-gallon stored pressure-type) shall be provided at each fire alarm striking station.

(22) Catwalks may be provided in the aisles between the metal stacks in high-activity records storage areas without provision of sprinklers under the walkway. Where provided, the walking surface of the catwalks shall be of expanded metal at least 0.09-inch thickness with a 2-inch mesh length. The surface opening ratio shall be equal to or greater than that outlined in Military Specification (MIL-M-17194C) of March 8, 1955. The sprinkler water demand for protection over bays with catwalks where records are not oriented perpendicular to the aisles shall be calculated hydraulically to give 0.3 gpm per square foot for the most remote 2,000 square feet.

(23) Storage of hazardous cellulose nitrate film requires special facilities not covered by the above standards. (See NFPA 40 and NFPA 232.)

(c) *Archives.* (1) Archival materials, whether on paper, plastic, or other media, generally require a much higher level of protection than temporary records, such as environmentally controlled and filtered storage space, and other safety measures not included in this section on agency records centers.

(2) Firesafety criteria for archives shall be the same as that for records centers, except that fire detection shall be incorporated into the archival storage areas in accordance with NFPA Standard 72E, and fire divisions in the archival storage areas may be reduced in size to reflect a management decision on the maximum amount of archives subject to damage or loss from fire.

[45 FR 5705, Jan. 24, 1980, as amended at 47 FR 34787, Aug. 11, 1982. Redesignated at 50 FR 15723, Apr. 19, 1985]

§ 1228.224 Requests for authority to establish or relocate records centers.

No agency records center shall be established or relocated from one city to another without the prior written approval of NARA.

(a) *Exclusions.* For purposes of this section, the term "agency records center" excludes:

(1) Records staging areas containing either less than 5,000 square feet of storage space or less than 25,000 cubic feet of records each used by agencies for the temporary storage of materials before their transfer to a records center or other disposition, provided no records are held in these staging areas more than 5 years. The facility standards in § 1228.222 apply to these staging areas.

(2) Records holding areas of either less than 5,000 square feet of floor space or less than 25,000 cubic feet of holdings each used solely for the storage of noncurrent records that are not suitable for transfer to a records center or archives for economic, high security, technical servicing, or other reasons. The facility standards is § 1228.222 apply to these records areas.

(b) *Content of requests.* Requests for authority to establish or relocate an agency records center shall be submitted in writing to the Archivist of the United States. These requests shall specify:

(1) Proposed location of the agency records center,

(2) Space to be occupied in gross square feet,

(3) Nature and quantity of records to be stored,

(4) Total personnel to be employed, and

(5) Justification for the proposed center which shall include a comparison between the annual cost per cubic foot to store the records in the agency records centers and the cost to store the same records in a NARA Federal records center. An analysis of NARA's Federal records center space and equipment cost may be obtained from the Office of Federal Records Centers (NC), National Archives, Washington, DC 20408. The justification also should indicate whether the records to be stored in the agency center have high security classification, require specialized processing or high-cost indexing, or are to be used by technical agency personnel stationed at the records center.

(c) *Approval of requests.* Requests for the establishment or relocation of an agency records center will be approved by the Archivist of the United States when greater economy or efficiency can be achieved through its operation than by the use of a Federal records center operated by NARA.

[45 FR 5705, Jan. 24, 1980, as amended at 47 FR 34788, Aug. 11, 1982; 50 FR 82, Jan. 2, 1985. Redesignated at 50 FR 15723, Apr. 19, 1985]

PART 1230—MICROGRAPHICS

Sec.

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AUTHORITY: 44 U.S.C. 2907, 3302 and 3312.

Subpart A—General

SOURCE: 55 FR 27435, July 2, 1990, unless otherwise noted.

§ 1230.1 Scope of part.

This part provides standards for using micrographic technology in the creation, use, storage, retrieval, preservation, and disposition of Federal records. Agencies should also consult 41 CFR subpart 201-45.1 for General Services Administration (GSA) requirements relating to micrographics management for Federal records.

§ 1230.2 Authority.

As provided in 44 U.S.C. Chapters 29 and 33, the Archivist of the United States is authorized to establish standards for the reproduction of records by photographic and microphotographic processes with a view to the disposal of original records; to establish uniform standards within the Government for the creation, storage, use, and disposition of processed microform records; and to establish, maintain, and operate centralized microfilming services for Federal agencies.

§ 1230.3 Publications incorporated by reference.

(a) *General.* The following publications cited in this part are hereby incorporated by reference. They are available from the issuing organization at the addresses listed in this section. They are also available for inspection at the Office of the Federal Register Information Center, Room 8301, 1100 L Street, NW., Washington, DC 20408. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of the approval, and a notice of any change in these materials will be published in the FEDERAL REGISTER.

(b) *American National Standard Institute (ANSI) and International (ISO) Standards.* ANSI and ISO standards cited in this part are available from the American National Standards Institute, 1430 Broadway, New York City, NY 10018.

ANSI IT9.1-1989, Imaging Media (Film)—Silver-Gelatin Type—Specifications for Stability.

ANSI IT9.2-1988, Imaging Media—Photographic Processed Films, Plates, and Papers—Filing Enclosures and Storage Containers.

ANSI IT9.5-1988, Imaging Media (Film)—Ammonia-Processed Diazo Films—Specifications for Stability.

ANSI PH1.43-1985, Photography (Film)—Processed Safety Film—Storage.

ANSI PH1.67-1985, Photography (Film)—Processed Vesicular Film—Specifications for Stability.

ANSI/ISO 5/2-1985, ANSI PH2.19-1986, Photography (Sensitometry)—Density Measurements—Geometric Conditions for Transmission Density.

ANSI/ISO 5/3-1984, ANSI PH2.18-1985, Photography (Sensitometry)—Density Measurements—Spectral Conditions.

ISO 3334-1989, Micrographics—ISO resolution test chart No. 2—Description and use.

(c) *Association of Information and Image Management (AIIM) Standards.* The following AIIM standards are available from the Association for Information and Image Management, 1100 Wayne Avenue, Suite 1100, Silver Spring, MD 20910.

ANSI/AIIM MS1-1988, Recommended Practices for Alphanumeric Computer-Output Mircoforms—Operational Practices for Inspection and Quality Control.

ANSI/AIIM MS5-1985, Micrographics—Microfiche.

ANSI/AIIM MS14-1986, Specifications for 16mm and 35mm Roll Microfilm.

ANSI/AIIM MS19-1987, Recommended Practice for Identification of Microforms.

ANSI/AIIM MS23-1983, Practice for Operational Procedures/Inspection and Quality Control of First Generation, Silver-Gelatin Microfilm of Documents.

ANSI/AIIM MS32-1987, Microrecording of Engineering Source Documents on 35mm Microfilm.

ANSI/AIIM MS41-1988, Unitized Microfilm Carriers (Aperture, Camera, Copy, and Image Cards).

ANSI/AIIM MS43-1988, Recommended Practice for Operational Procedures/Inspection and Quality Control of Duplicate Microforms of Documents and From COM.

AIIM Special Interest Package (SIP) No. 34, July, 1987, Microspots and Aging Blemishes.

(d) *National Institute of Standards and Technology (NIST) publications.* The following publication is available from the National Institute of Standards and Technology, Office of Standard Reference Materials, Rm. B311 Chemistry, Gaithersburg, MD 20899.

NIST-SRM 1010a, Microcopy Resolution Test Chart (ISO Test Chart No. 2), certified June 1, 1990.

§ 1230.4 Definitions.

For the purpose of this part the following definitions shall apply:

Archival microfilm. A photographic film that meets the standards described in § 1230.14 and that is suitable for the preservation of permanent records when stored in accordance with § 1230.20.

Archival storage conditions. Storage conditions, as specified in § 1230.20(a), that are suitable for the preservation of photographic film appraised as having permanent value. Archival storage conditions prolong the useful life of both permanent and temporary photographic records.

Computer Output Microfilm (COM). Microfilm containing data produced by a recorder from computer generated signals.

Facility. An area set aside for equipment and operations required in the production or reproduction of microforms either for internal use or for the use of other organizational elements of the Federal Government.

Long-term Film. A photographic film that meets the standards described in ANSI IT9.1-1989 for "long-term film" and that is suitable for the preservation of temporary records for more than 10 years.

Microfilm. (a) Raw (unexposed and unprocessed) fine-grain, high resolution photographic film with characteristics that make it suitable for use in micrographics;

(b) The process of recording microimages on film; or

(c) A fine-grain, high resolution photographic film containing an image greatly reduced in size from the original.

Microform. A term used for any form containing microimages.

Microimage. A unit of information such as a page of text or a drawing, that has been made too small to be read without magnification.

Permanent record. Any record (see definition in 44 U.S.C. 3301) that has been determined by the Archivist of the United States to have sufficient historical or other value to warrant its continued preservation by the Government.

Temporary record. Any record approved by the Archivist of the United States for disposal, either immediately or after a specified retention period. Temporary records may warrant microfilming for economies of storage and distribution.

Unscheduled record. Any record that has not been appraised by NARA, i.e., a record that has neither been approved for disposal nor designated as permanent by the Archivist of the United States in accordance with part 1228 of this chapter.

Use or work copies. Duplicates of original film which are prepared for use as reference copies or as duplication masters for recurring or large-scale duplication. These copies are not to be confused with the preservation master copies which are stored under the conditions in § 1230.20 and which are not to be used for reference purposes.

Subpart B—Standards for Microfilming Records

SOURCE: 55 FR 27437, July 2, 1990, unless otherwise noted.

§ 1230.10 Disposition authorization.

(a) *Permanent or unscheduled records.* Agencies must schedule the disposition of both source documents (originals) and microforms by submitting Standard Form (SF) 115, Request for Records Disposition Authority, to NARA in accordance with part 1228 of this chapter. Source documents may not be disposed of before NARA authorization is received. The original records shall not be destroyed after microfilming when NARA determines that the original records have intrinsic value or when NARA concludes that the microforms present reference problems because of the access restrictions, including security classification, or other characteristics of the original records.

(1) Agencies using microfilming methods and procedures meeting the standards in § 1230.14 shall include on the SF 115 the following certification: "This certifies that the records described on this form were (or will be) microfilmed in accordance with the standards set forth in 36 CFR part 1230."

(2) Agencies using microfilming methods, materials and procedures that do not meet the standards in § 1230.14(a) shall include on the SF 115 a description of the system and standards used.

(3) Agencies proposing to retain and store the silver original microforms of permanent records after disposal of the original records shall include on the SF 115 a statement that the agency's storage conditions shall comply with the standards of § 1230.20 and that the inspections required by § 1230.22 will be performed.

(b) *Temporary records.* Agencies do not need to obtain further NARA approval before disposing of scheduled temporary records that have been microfilmed. The approved retention period for temporary records shall be applied to microform copies of such records; the original records shall be destroyed upon verification of the microfilm, unless legal requirements preclude early destruction of the originals.

§ 1230.12 Preparatory steps prior to filming.

(a) The integrity of the original records authorized for disposal shall be maintained by ensuring that the microforms are adequate substitutes for the original records and serve the purpose for which such records were created or maintained. Copies shall be complete and contain all information shown on the originals.

(b) The records shall be arranged, identified, and indexed so that any particular document or component of the records can be located. Each microform roll or fiche shall include accurate titling information on a titling target or header. At a minimum, titling information shall include the name of the agency and organization; the title of the records; the number or identifier for each unit of film; the security classification, if any; and the inclusive dates, names, or other data identifying the records to be included on a unit of film. For fiche, complete titling information may be placed as a microimage in frame 1 if the information will not fit on the header.

(c) Each microform shall contain an identification target showing the date of filming. When necessary to give the film copy better legal standing, the target shall also identify the person authorizing the microfilming. See ANSI/AIIM MS19-1987 for standards for identification targets.

(d) The following formats are mandatory standards for microforms.

(1) *Roll film*—(i) *Source documents.* The formats described in ANSI/AIIM MS14-1988 shall be used for microfilming source documents on 16mm and 35mm roll film. A reduction ratio of 1:24 is recommended for typewritten or correspondence type of documents. See ANSI/AIIM MS23-1983 for determining the appropriate reduction ratio and format for meeting the image quality requirements. When microfilming on 35mm film for aperture card applications, the format dimensions in AIIM/MS32-1987, Table 1 shall be mandatory and the aperture card format "D Aperture" shown in ANSI/AIIM MS41-1988, Figure 1 shall be used.

(ii) *COM.* Computer output microfilm (COM) generated images shall be the simplex mode described in ANSI/AIIM MS14-1988 at an effective ratio of 1:24 or 1:48 depending upon the application.

(2) *Microfiche.* For microfilming source documents or computer generated information (COM) on microfiche, the appropriate formats and reduction ratios prescribed in ANSI/AIIM MS5-1985 shall be used as specified for the size and quality of the documents being filmed. See ANSI/AIIM MS23-1983 for determining the appropriate reduction ratio and format for meeting the image quality requirements.

(e) *Index placement.*—(1) *Source documents.* When filming original (source) documents, all indexes, registers, or other finding aids, if microfilmed, shall be placed either in the first frames of the first roll of film or in the last frames of the last roll of film of a series or in the last frames of the last microfiche or microfilm jacket of a series.

(2) *COM.* Computer-generated microforms shall have the indexes following the data on a roll of film or in the last frames of a single microfiche, or the last frames of the last fiche in a series. Other index locations may be used only if dictated by special system constraints.

§ 1230.14 Film and image requirements for permanent records or unscheduled records.

(a) *Application.* The following standards shall apply to the microfilming of permanent records where the original paper record will be destroyed or otherwise disposed of. Systems that produce original permanent records on microfilm with no paper originals, such as computer output microfilm (COM), shall be designed so that they produce microfilm which meets the standards of this section. Unscheduled records from systems such as COM must also meet the standards of this section. Prior NARA approval of a SF 115 is required before unscheduled paper records are disposed of after microfilming.

(b) *Film stock standards.* Only polyester-based silver gelatin type film that conforms to ANSI IT9.1-1989 for archival film shall be used in all applications, except when generating film to be spliced to existing rolls of cellulose film, when cellulose triacetate film that conforms of ANSI IT9.1-1989 shall be used. To ensure protection for permanent records, agencies using microfilm systems which do not produce silver gelatin originals meeting these standards shall submit with the Standard Form 115 required by § 1230.10 a schedule for the production of silver gelation duplicates meeting the standards.

(c) *Processing standards.* Microforms shall be processed so that the residual thiosulfate ion concentration will not exceed 0.014 grams per square meter in accordance with ANSI IT9.1-1989. Processing shall be in accordance with processing procedures in ANSI/AIIM MS1-1988 and MS23-1983.

(d) *Quality standards*—(1) *Resolution*—(i) *Source documents.* The method for determining minimum resolution on microforms of source documents shall conform to the Quality Index Method for determining resolution and anticipated losses when duplicating as described in ANSI/AIIM MS23-1983 and MS43-1988. Resolution tests shall be performed using a NIST-SRM 1010a, Microcopy Resolution Test Chart (a calibrated and certified photographic reproduction) as specified in ISO 3334-1989 (the standard practice for using the test chart), and the patterns will be read following the instructions of ISO 3334-1989. The character used to determine the height used in the Quality Index formula shall be the smallest character used to display information. A Quality Index of five is required at the third generation level.

(ii) *COM.* Computer output microforms (COM) shall meet the requirements of ANSI/AIIM MS1-1988.

(2) *Background density of images.* The background ISO standard visual diffuse transmission density on microforms shall be appropriate to the type of documents being filmed. The procedure for density measurement is described in ANSI/AIIM MS23-1983 and the densitometer shall be in accordance with ANSI/ISO 5/3-1984, for spectral conditions and ANSI/ISO 5/2-1985, for geometric conditions for transmission density. Recommended visual diffuse transmission background densities for images of documents are as follows:

Classification	Description of document	Background density
Group 1	High-quality, high-contrast printed books, periodicals, and black typing.	1.3-1.5
Group 2	Fine-line originals, black opaque pencil writing, and documents with small high-contrast printing.	1.15-1.4
Group 3	Pencil and ink drawings, faded printing, and very small printing, such as footnotes at the bottom of a printed page.	1.0-1.2
Group 4	Low-contrast manuscripts and drawings, graph paper with pale, fine-colored lines; letters typed with a worn ribbon; and poorly printed, faint documents.	0.8-1.0
Group 5	Poor-contrast documents (special exception).	0.7-0.85

Recommended visual diffuse transmission densities for computer generated images are as follows:

Film type	Process	Density measurement method	Min. Dmax*	Max. Dmin*	Minimum density difference
Silver gelatin	Conventional	Printing or diffuse	0.75	0.15	0.60
Silver gelatin	Full reversal	Printing	1.50	0.20	1.30

*Character or line density, measured with a microdensitometer or by comparing the film under a microscope with an image of a known density.

(3) *Base plus fog density of films.* The base plus fog density of unexposed, processed films should not exceed 0.10. When a tinted base film is used, the density will be increased. The difference must be added to the values given in the tables in paragraph (d)(2) of this section.

(4) *Line or Stroke Width.* Due to optical limitations in most photographic systems, film images of thin lines appearing in the original document will tend to fill in as a function of their width and density. Therefore, as the reduction ratio of a given system is increased, the background density shall be reduced as needed to ensure that the copies produced will contain legible characters.

§ 1230.16 Film and image requirements for temporary records, duplicates, and user copies.

(a) *Film stocks.* The preferred film stock for all microforms is specified in § 1230.14(b). However, for economic reasons and systems applications, other film types may be better suited for microforms containing temporary records, and for duplicates and user copies.

(b) *Processing.* If film is to be kept for more than 10 years, silver gelatin film must be used for filming and the film must be processed according to ANSI IT 9.1-1989, "long-term film." For films to be kept less than 10 years, use manufacturer's instructions. For vesicular films, use ANSI PH1.67-1985 for guidance. For diazo films, use ANSI IT9.5-1988 for guidance.

(c) *Quality Standards.*—(1) *Resolution.* See § 1230.14 (d)(1) for method of determining resolution. A Quality Index of five is recommended at the level of the specific number of generations used in the system for temporary records, duplicates and user copies.

(2) *Background density of images.* The densities recommended in § 1230.14 (d)(2) apply to microforms of temporary records, duplicates and user copies. However, a ten percent per generation wider range is acceptable.

(i) For diazo and electrophotographic films, the ISO standard visual diffuse transmission density shall be measured in accordance with ANSI/ISO 5/3-1984, for spectral conditions and ANSI/ISO 5/2-1985, for geometric conditions.

(ii) For vesicular and other light scattering films, the ISO standard for f/4.5 projection transmission density shall be measured in accordance with ANSI/ISO 5/2-1985, for geometric conditions for transmission density.

Subpart C—Standards for the Storage, Use and Disposition of Microform Records

SOURCE: 55 FR 27438, July 2, 1990, unless otherwise noted.

§ 1230.20 Storage.

(a) *Permanent records.* The conditions specified in ANSI PH1.43-1985 and ANSI IT9.2-1988, are required for storing permanent microform records.

(b) *Temporary records.* Temporary microform records can be stored under the same conditions as temporary paper records.

§ 1230.22 Inspection.

(a) *Permanent and unscheduled records.*

(1) Master films of permanent records microfilmed in order to dispose of the original record and master films of permanent records originally created on microfilm shall be inspected when 2 years old and, until they are transferred to a Federal records center or to the National Archives, every 2 years thereafter. The inspection shall be made on a randomly selected sample consisting of 1000 microform units, or 1 percent of the total number of microform units in the batch, whichever is smaller. At least one microform unit must be inspected in batches of less than 100 units. The term "microform unit" refers to a single roll of microfilm, a microfiche, or similar appropriate unit for inspection. The term "batch" refers to microform units which were processed on the same equipment within a short time span and which have been stored together in the same environment since their creation.

(2) Microforms cannot be accepted for deposit with the National Archives of the United States until the first inspection (occurring after the microforms are 2 years old) has been performed. Permanent microforms may be transferred to a Federal records center only after the agency has performed the first inspection or has certified that the microforms will be inspected by the agency, an agency contractor, or the Federal records center (on a reimbursable basis) when they become 2 years old.

(3) To facilitate inspection, an inventory of microfilm must be maintained, listing each microform series/publication by production date, producer, processor, format, and results of previous inspections.

(4) The elements of the inspection shall consist of:

(i) An inspection for aging blemishes following the guidelines in the AIIM/SIP34-1987;

(ii) A rereading of resolution targets;

(iii) A remeasurement of density; and

(iv) A certification of the environmental conditions under which the microforms are stored, as specified in § 1230.20(a).

(5) An inspection log shall be maintained and furnished in hard copy form to NARA in accordance with § 1230.26(b). Information to be contained in the log shall include:

(i) A complete description of all records tested (title; number or identifier for each unit of film; security classification, if any; and inclusive dates, names, or other data identifying the records on the unit of film);

(ii) The date of inspection;

(iii) The elements of inspection;

(iv) Any defects uncovered; and

(v) The corrective action taken.

In addition, the log shall contain the results of all archival film tests required by § 1230.14.

(6) A copy of the inspection report shall be furnished to NARA in accordance with § 1230.26(b). The inspection report shall include:

(i) The quantity of microform records on hand, i.e., number of rolls and number of microfiche;

(ii) The quantity of microforms inspected;

(iii) The condition of the microforms;

(iv) A summary of any defects discovered; and

(v) A summary of corrective action taken.

(7) An agency having in its custody a master microform that is deteriorating, as shown by the inspection, shall prepare a silver duplicate in accordance with § 1230.14 to replace the deteriorating master. The duplicate film will be subject to the 2-year inspection requirement before transfer to a Federal Record Center or to the National Archives.

(8) Inspection should be performed in an environmentally controlled area which avoids pollutant gases and particulates, temperatures in excess of 70 °F (20 °C) or relative humidities above 55%.

(b) *Temporary records.* Inspection by sampling procedures described in § 1230.22(a) is recommended but not required.

§ 1230.24 Use of microform records.

(a) The master microform shall not be used for reference purposes. Duplicates shall be used for reference and for further duplication on a recurring basis or for large-scale duplication, as well as for distribution of records on microform. Agency procedures shall ensure that master microforms remain clean and undamaged during the duplication process.

(b) Agencies retaining the original record in accordance with an approved records disposition schedule may apply agency standards for the use of microform records.

§ 1230.26 Disposition of microform records.

The disposition of microform records shall be carried out in the same manner prescribed for other types of records in part 1228 of this chapter with the following additional requirements:

(a) The silver gelatin original (or a silver gelatin duplicate negative microform record created in accordance with § 1230.14) plus one microform copy of each permanent or unscheduled record microfilmed by an agency, shall be transferred to an approved agency records center, the National Archives, or to a Federal records center, at the time that the records are to be retired in accordance with the approved records disposition schedule. Non-silver copies must be packaged separately and stored separately from silver originals.

(b) The microforms shall be accompanied by:

(1) Information identifying the agency and organization; the title of the records; the number or identifier for each unit of film; the security classification, if any; the inclusive dates, names, or other data identifying the records to be included on a unit of film;

(2) Any finding aids relevant to the microform that are not contained in the microform; and

(3) The inspection log forms and inspection reports required by § 1230.22(a) (5) and (6).

(c) The information required in this paragraph (b) shall be attached to the SF 135 when records are being transferred to a Federal records center and to the SF 258 when records are being transferred to the legal custody of the National Archives.

Subpart D—Centralized Micrographic Services

SOURCE: 50 FR 26935, June 28, 1985. Redesignated at 55 FR 27435, July 2, 1990.

§ 1230.50 Services available.

NARA provides reimbursable microfilming services at many of its Federal records centers, including the preparation, indexing, and filming of records, inspection of film, and labeling of film containers. Agencies desiring microfilming services should contact the Office of Federal Records Centers, National Archives (NC), Washington, DC 20408, or the director of the Federal records center serving the agency's records (see § 1228.150 of this chapter).

§ 1230.52 Fees for services.

The fees for microfilming services will be announced in NARA bulletins. For microfilming services not listed, contact the office shown in § 1230.50.

PART 1232—AUDIOVISUAL RECORDS MANAGEMENT

Sec.
1232.1 Scope of part.
1232.2 Objectives.
1232.4 Agency program responsibilities.
1232.6 Centralized audiovisual services.

AUTHORITY: 44 U.S.C. 2904 and 3101.

SOURCE: 50 FR 26938, June 28, 1985, unless otherwise noted.

§ 1232.1 Scope of part.

This part prescribes policies and procedures for managing audiovisual records to ensure adequate and proper documentation and appropriate disposition of audiovisual records.

§ 1232.2 Objectives.

The objectives of audiovisual records management are to achieve the effective creation, maintenance, use, and disposition of audiovisual and related records to be created and maintained; establishing standards for maintenance and disposition of audiovisual and related records; establishing standards for the physical security and preservation of audiovisual records; and reviewing audiovisual recordkeeping practices on a continuing basis to improve procedures.

§ 1232.4 Agency program responsibilities.

(a) Each Federal agency, in providing for effective controls over the creation of records, shall establish an appropriate program for the management of audiovisual records which program shall be governed by the following guidelines:

(1) Prescribe the types of records to be created and maintained so that audiovisual operations and their products are properly documented (guidelines describing the appropriate types of records are in § 1228.184 of this chapter).

(2) For contractor-produced audiovisual records, establish contract specifications which will protect the Government's legal title and control over all such audiovisual media and related documentation.

(3) Keep inventories indicating the location of all generations of audiovisual records, whether in agency storage, a Federal records center, or in a commercial facility such as a laboratory or library distribution center.

(4) Schedule disposition of all audiovisual records as soon as practicable after creation, following the instruction in GRS 21, Audiovisual Records, or a specific agency records schedule approved by the Archivist of the United States. The scheduling of permanent records must take into account the different record elements identified in § 1228.184, and must always include related finding aids.

(5) Review agency audiovisual recordkeeping practices for possible improvement.

(b) Each Federal agency, in establishing a program for proper storage, maintenance, and use of audiovisual records, shall implement the following standards in its practices:

(1) *Nitrate film.* Remove nitrocellulose-base motion pictures, still pictures, and aerial film from records storage areas and place them in vaults meeting the standards prescribed in NFPA 40-1982, Standard for the Storage and Handling of Cellulose Nitrate Motion Picture Film, which is incorporated by reference. Because of their age and inherent instability, immediately offer nitrate films to NARA so that they may be reviewed for disposal or copied and destroyed, as appropriate. NFPA 40-1982 is available from the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. This standard is also available for inspection at the Office of the Federal Register, Room 8301, 1100 L Street NW, Washington, DC. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a)

and 1 CFR Part 51. These materials are incorporated by reference as they exist on the date of approval and a notice of any change in these materials will be published in the FEDERAL REGISTER.

(2) *Unstable safety film.* Identify permanent or unscheduled audiovisual records composed of diacetate or other early forms of acetate film that are starting to deteriorate and offer them to NARA so that they can be copied. Although not hazardous like nitrate film, acetate film will deteriorate over time.

(3) *Storage conditions.* (i) Provide audiovisual records storage facilities secure from unauthorized access and make them safe from fire, water, flood, chemical or gas damage, and from other harmful conditions. See NFPA 232-1986, Standard for the Protection of Records issued by the National Fire Protection Association, which is incorporated by reference. The standard is available from the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. This standard is also available for inspection at the Office of the Federal Register, Room 8301, 1100 L Street NW, Washington, DC. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. These materials are incorporated by reference as they exist on the date of approval and a notice of any change in these materials will be published in the FEDERAL REGISTER.

(ii) Maintain good ambient storage conditions for audiovisual records. Generally, the temperature should not exceed 70 degrees F and relative humidity should be maintained in the range of 40-60%. Avoid fluctuating temperatures and humidities. Cooler temperatures and lower relative humidities are recommended for the storage of color films, and, for that reason, NARA will make a limited amount of temporary space available for the cold storage of Federal civilian agencies' color originals, negatives, and masters, provided the records are scheduled as permanent and are inactive.

(iii) For the storage of permanent or unscheduled records, utilize audiovisual storage containers or enclosures made of noncorroding metal, inert plastics, paper products and other safe materials recommended and specified in ANSI standards: PH1.43-1985, For Photography (Film)—Processed Safety Film—Storage; PH1.48-1982, For Photography (Film and Slides)—Black-and-White Photographic Paper Prints—Practice for Storage; and ANSI/ASC PH1.53-1984, For Photography (Processing)—Processed Films, Plates, and Papers—Filing Enclosures and Containers for Storage. These standards, which are incorporated by reference, are available from ANSI, Inc., 1430 Broadway, New York, NY 10018. These standards are also available for inspection at the Office of the Federal Register, Room 8401, 1100 L Street NW, Washington, DC. This incorporation by reference was approved by the Director of the FEDERAL REGISTER in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. These materials are incorporated by reference as they exist on the date of approval and a notice of any change in these materials will be published in the FEDERAL REGISTER.

(iv) Maintain originals and use copies (e.g., negatives and prints) separately, whenever practicable.

(4) *Maintenance and operations.* (i) Because of their extreme vulnerability to damage, handle audiovisual records in accordance with commonly accepted industry practices. For further information, consult ANSI, Inc., 1430 Broadway, New York, NY 10018 and the Society of Motion Picture and Television Engineers, Inc., 862 Scarsdale Avenue, Scarsdale, NY 10583. Use only personnel trained to perform their audiovisual duties and responsibilities.

(ii) Maintain continuous custody of permanent or unscheduled audiovisual records. Make loans of such records outside of the agency only if a record copy is maintained in the agency's custody at all times.

(iii) Take all steps necessary to prevent accidental or deliberate alteration or erasure of audiovisual records.

(iv) Do not erase information recorded on permanent or unscheduled magnetic sound or video media.

(v) If different versions of audiovisual productions (e.g., short and long versions or foreign-language versions) are prepared, keep an unaltered copy of each version for record purposes.

(vi) Maintain the association between audiovisual records and the finding aids for them, such as captions and published and unpublished catalogs.

(5) *Formats.* (i) When ordering photographic materials for permanent or unscheduled records, ensure that still picture negatives and motion picture preprints (negatives, masters, etc.) are composed of cellulose triacetate or polyester bases and are processed in accordance with industry standards as specified in ANSI/ASC PH1.28-1984, For Photography (Film)—Archival Records, Silver-Gelatin Type, on Cellulose Ester Base, or ANSI/ASC PH1.41-1984, For Photography (Film)—Archival Records, Silver-Gelatin Type, on Polyester Base, which are incorporated by reference. It is particularly important to limit residual sodium thiosulphate on newly processed photographic film, black and white or color, to the range of .002 to .004 grams per meter. Request laboratories to process film in accordance with this standard. Excessive hypo will shorten the longevity of film and accelerate color fading. If using reversal type processing, request full photographic reversal; i.e., develop, bleach, expose, develop, fix, and wash. The standards cited in this paragraph are available from ANSI, Inc., 1430 Broadway, New York, NY 10018. These standards are also available for inspection at the Office of the Federal Register, Room 8301, 1100 L Street NW, Washington, DC. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. These materials are incorporated by reference as they exist on the date of approval and a notice of any change in these materials will be published in the FEDERAL REGISTER.

(ii) Do not use motion pictures in a final "A & B" format (two precisely matched reels designed to be printed together) for the reproduction of excerpts or stock footage.

(iii) Use only industrial or professional format video tapes (e.g., 1-inch, ¾-inch) for record copies of permanent or unscheduled recordings. Limit the use of consumer formats (e.g., VHS, Beta) to distribution or reference copies or to subjects scheduled for disposal.

(iv) Record permanent or unscheduled audio recordings on ¼-inch open-reel tapes at 3¾ or 7½ inches per second, full track, using professional unrecorded polyester splice-free tape stock. Audio cassettes are not sufficiently durable to be used for permanent records.

(c) The disposition of audiovisual records shall be carried out in the same manner as that prescribed for other types of records in Part 1228 of this chapter. For further instructions on the disposition of audiovisual records see § 1228.184 of this chapter, Audiovisual Records.

[52 FR 948, Jan. 9, 1987]

§ 1232.6 Centralized audiovisual services.

(a) *National Audiovisual Center.* The National Audiovisual Center (NAC) serves as a central information source to the general public and Federal agencies concerning the availability of audiovisual products produced by or for the Government. NAC rents and sells Federal audiovisual productions to the public and Federal agencies. NAC compiles and publishes Government-wide catalogs and uses other information dissemination techniques to inform the public about audiovisual products available for sale and rent. NAC develops criteria, establishes appropriate terminology, and recommends Government-wide practices for the cataloging and indexing of audiovisual productions, and maintains a data bank containing information on Federal audiovisual productions.

(b) *Agency requirements.* Agencies must check commercial and Government sources before authorizing audiovisual productions or procurements.

(1) *Subject search.* Prior to authorizing any type of audiovisual production, all agencies will attempt to determine if existing productions are available to satisfy their needs. Agencies

should use the resources of NAC to determine what Federal productions exist by requesting subject searches. Standard Form 282, Mandatory Title Check, may be used for this purpose. Agencies should also review commercial media collections, either through catalogs or computer-based resources. If there are no existing or commercial productions available, the agency may produce, within existing budget limitations, additional productions to support program responsibilities.

(2) *Federal Audiovisual Production Report* (SF 202). (i) Standard Form 202, Federal Audiovisual Production Report, shall be prepared for all productions by each agency when production is authorized, except as noted in OMB Circular A-114. Interagency report control number 0151-NAR-XX has been assigned to this report in accordance with 41 CFR Part 201-45. Prior to production, pre-production sections of the report, with information about materials planned or in process shall be completed and sent to NAC. Upon completion of an audiovisual production, the post-production sections of the SF 202 shall be completed and forwarded to NAC. This information will become part of the Center's data base. Information from the data base will be provided to other Federal agencies and the public.

(ii) The Department of Defense will compile its own production data using DOD Form 1955, DOD Audiovisual Production Report. Information about these productions will be made available to NAC through the Defense Audiovisual Information System (DAVIS).

(3) *Annual Audiovisual Report*. Agencies shall file Standard Form 203, Annual Audiovisual Report, detailing all audiovisual activity each fiscal year. The report is due December 31 each year for the previous fiscal year, and shall be forwarded to the National Audiovisual Center, National Archives and Records Administration, 8700 Edgeworth Drive, Capitol Heights, MD 20743-3701). All audiovisual productions, including productions excluded from other reporting requirements of OMB Circular A-114, shall be reported on the SF 203. Interagency report control number 0152-NAR-AN has been assigned to this report in accordance with 41 CFR Part 201-45. The report is used to acquire data on Federal audiovisual activities, including overhead for in-house expenses. This information, when compiled, will be made available, upon request, to all agencies and to the public. Copies of SF 203 may be obtained from NAC. Agencies shall ensure, through management control and cost accounting systems, the accuracy and consistency of audiovisual production budget data provided to OMB and the SF 203 data furnished to NAC.

(4) *Evaluation*. Agency management should perform appropriate evaluation of audiovisual productions and include evaluation in audiovisual management control systems to ensure goals and objectives of the productions were met.

(i) Each agency shall develop an evaluation program to assess the value and effectiveness of its audiovisual productions.

(ii) The complexity and cost of evaluations should be commensurate to the cost and program impact of the audiovisual production being evaluated. Evaluation methods may range from a simple tally sheet to record sample responses to a more complex survey with interviews and testing forms.

(5) *Liaison*. Each agency shall forward the name, mailing address, and telephone number of the office which is assigned responsibility for management oversight of the agency's audiovisual activities to the Office of Federal Procurement Policy (OFPP), with an information copy to NAC (mailing address: National Audiovisual Center, National Archives and Records Administration, 8700 Edgeworth Drive, Capitol Heights, MD 20743-3701). These designated offices shall serve as the main point of contact for OFPP and NAC in all matters relating to Governmentwide audiovisual policies.

(6) *Stock footage*. Agencies, except the Department of Defense, shall offer to the Special Archives Division (NNS), NARA, motion picture outtakes, trims, and other unedited motion picture footage (with stock footage value) accumulated in the production of audiovisual products. The

footage will be made available to other Federal agencies and the public through services provided by the Special Archives Division (mailing address: National Archives (NNS), Washington, DC 20408).

PART 1234—ELECTRONIC RECORDS MANAGEMENT

Subpart A—General

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Subpart C—Standards for the Creation, Use, Preservation, and Disposition of Electronic Records

1234.20 Creation and use of data files.
1234.22 Creation and use of text documents.
1234.24 Judicial use of electronic records.
1234.26 Security of electronic records.
1234.28 Selection and maintenance of electronic records storage media.
1234.30 Retention of electronic records.
1234.32 Destruction of electronic records.

AUTHORITY: 44 U.S.C. 2904, 3101, 3102, and 3105.

SOURCE: 55 FR 19218, May 8, 1990, unless otherwise noted.

Subpart A—General

§ 1234.1 Scope of part.

This part establishes the basic requirements related to the creation, maintenance, use, and disposition of electronic records. Electronic records include numeric, graphic, and text information, which may be recorded on any medium capable of being read by a computer and which satisfies the definition of a record. This includes, but is not limited to, magnetic media, such as tapes and disks; and optical disks. Unless otherwise noted, these requirements apply to all electronic records systems, whether on microcomputers, minicomputers, or mainframe computers, regardless of storage media, in network or stand-alone configurations. Guidance on electronic records management and related issues may be obtained from the National Archives and Records Administration, Agency Services Division (NIA), Washington, DC 20408 and the General Service Administration, Office of Innovative Office Systems (KO), Washington, DC 20405.

§ 1234.2 Definitions.

Basic records management terms are defined in 36 CFR 1220.14. As used in part 1234—

Data base means a set of data, consisting of at least one data file, that is sufficient for a given purpose.

Data base management system means a software system used to access and retrieve data stored in a data base.

Data file means related numeric, textual, or graphic information that is organized in a strictly prescribed form and format.

Electronic record means any information that is recorded in a form that only a computer can process and that satisfies the definition of a Federal record in 44 USC 3301.

Electronic records system means any information system that produces, manipulates, or stores Federal records by using a computer.

Information system has the meaning given to it by the Office of Management and Budget in Circular No. A-130: "the organized collection, processing, transmission, and dissemination of information in accordance with defined procedures, whether automated or manual."

Text documents means narrative or tabular documents, such as letters, memorandums, and reports, in loosely prescribed form and format.

Subpart B—Program Requirements

§ 1234.10 Agency responsibilities.

The head of each Federal agency shall ensure that the management of electronic records incorporates the following elements:

(a) Assigning responsibility to develop and implement an agencywide program for the management of all records created, received, maintained, used, or stored on electronic media;

and notifying the National Archives and Records Administration, Office of Records Administration (NI), Washington, DC 20408 and the General Services Administration, Regulations Branch (KMPR), Washington, DC 20405, of the name and title of the person assigned the responsibility.

(b) Integrating the management of electronic records with other records and information resources management programs of the agency.

(c) Incorporating electronic records management objectives, responsibilities, and authorities in pertinent agency directives and disseminating them throughout the agency as appropriate.

(d) Establishing procedures for addressing records management requirements, including recordkeeping requirements and disposition, before approving new electronic records systems or enhancements to existing systems.

(e) Ensuring that adequate training is provided for users of electronic records systems in the operation, care, and handling of the equipment, software, and media used in the system.

(f) Developing and maintaining up-to-date documentation about all electronic records systems that is adequate to: Specify all technical characteristics necessary for reading or processing the records; identify all defined inputs and outputs of the system; define the contents of the files and records; determine restrictions on access and use; understand the purpose(s) and function(s) of the system; describe update cycles or conditions and rules for adding information to the system, changing information in it, or deleting information; and ensure the timely, authorized disposition of the records.

(g) Specifying the location, manner, and media in which electronic records will be maintained to meet operational and archival requirements, and maintaining inventories of electronic records systems to facilitate disposition.

(h) Developing and securing NARA approval of records disposition schedules, and ensuring implementation of their provisions.

(i) Specifying the methods of implementing controls over national security-classified, sensitive, proprietary, and Privacy Act records stored and used electronically.

(j) Establishing procedures to ensure that the requirements of this part are applied to those electronic records that are created or maintained by contractors.

(k) Ensuring compliance with applicable Governmentwide policies, procedures, and standards such as those issued by the Office of Management and Budget, the General Accounting Office, the General Services Administration, the National Archives and Records Administration, and the National Institute of Standards and Technology.

(l) Reviewing electronic records systems periodically for conformance to established agency procedures, standards, and policies as part of the periodic reviews required by 44 U.S.C. 3506. The review should determine if the records have been properly identified and described, and whether the schedule descriptions and retention periods reflect the current informational content and use. If not, or if substantive changes have been made in the structure, design, codes, purposes, or uses of the system, submit an SF 115, Request for Records Disposition Authority, to NARA.

Subpart C—Standards for the Creation, Use, Preservation, and Disposition of Electronic Records

§ 1234.20 Creation and use of data files.

(a) For electronic records systems that produce, use, or store data files, disposition instructions for the data shall be incorporated into the system's design.

(b) Agencies shall maintain adequate and up-to-date technical documentation for each electronic records system that produces, uses, or stores data files. Minimum documentation required is a narrative description of the system; physical and technical characteristics of the records, including a record layout that describes each field including its name, size, starting or relative position, and a description of the form of the data (such as alphabetic, zoned decimal, packed decimal, or numeric), or a data dictionary or the equivalent information associated with a data base management system including a description of the relationship between data elements in data bases; and any other technical information needed to read or process the records.

§ 1234.22 Creation and use of text documents.

(a) Electronic records systems that maintain the official file copy of text documents on elecronic media shall meet the following minimum requirements:

(1) Provide a method for all authorized users of the system to retrieve desired documents, such as an indexing or text search system;

(2) Provide an appropriate level of security to ensure integrity of the documents;

(3) Provide a standard interchange format when necessary to permit the exchange of documents on electronic media between agency computers using different software/operating systems and the conversion or migration of documents on electronic media from one system to another; and

(4) Provide for the disposition of the documents including, when necessary, the requirements for transferring permanent records to NARA (see § 1228.188 of this chapter).

(b) Before a document is created electronically on electronic records systems that will maintain the official file copy on electronic media, each document shall be identified sufficiently to enable authorized personnel to retrieve, protect, and carry out the disposition of documents in the system. Appropriate identifying information for each document maintained on the electronic media may include: office of origin, file code, key words for retrieval, addressee (if any), signator, author, date, authorized disposition (coded or otherwise), and security classification (if applicable). Agencies shall ensure that records maintained in such systems can be correlated with related records on paper, microform, or other media.

§ 1234.24 Judicial use of electronic records.

Electronic records may be admitted in evidence to Federal courts for use in court proceedings (Federal Rules of Evidence 803(8)) if trustworthiness is established by thoroughly documenting the recordkeeping system's operation and the controls imposed upon it. Agencies should implement the following procedures to enhance the legal admissibility of electronic records.

(a) Document that similar kinds of records generated and stored electronically are created by the same processes each time and have a standardized retrieval approach.

(b) Substantiate that security procedures prevent unauthorized addition, modification or deletion of a record and ensure system protection against such problems as power interruptions.

(c) Identify the electronic media on which records are stored throughout their life cycle, the maximum time span that records remain on each storage medium, and the NARA-approved disposition of all records.

(d) Coordinate all of the above with legal counsel and senior IRM and records management staff.

§ 1234.26 Security of electronic records.

Agencies shall implement and maintain an effective records security program that incorporates the following:

(a) Ensures that only authorized personnel have access to electronic records.

(b) Provides for backup and recovery of records to protect against information loss.

(c) Ensures that appropriate agency personnel are trained to safeguard sensitive or classified electronic records.

(d) Minimizes the risk of unauthorized alteration or erasure of electronic records.

(e) Ensures that electronic records security is included in computer systems security plans prepared pursuant to the Computer Security Act of 1987 (40 USC 759 note).

§ 1234.28 Selection and maintenance of electronic records storage media.

(a) Agencies shall select appropriate media and systems for storing agency records throughout their life, which meet the following requirements:

(1) Permit easy retrieval in a timely fashion;

(2) Facilitate distinction between record and nonrecord material;

(3) Retain the records in a usable format until their authorized disposition date; and

(4) When appropriate, meet requirements for transferring permanent records to NARA (see § 1228.188 of this chapter).

(b) The following factors shall be considered before selecting a storage medium or converting from one medium to another:

(1) The authorized life of the records, as determined during the scheduling process;

(2) The maintenance necessary to retain the records;

(3) The cost of storing and retrieving the records;

(4) The records density;

(5) The access time to retrieve stored records;

(6) The portability of the medium (that is, selecting a medium that will run on equipment offered by multiple manufacturers) and the ability to transfer the information from one medium to another (such as from optical disk to magnetic tape); and

(7) Whether the medium meets current applicable Federal Information Processing Standards.

(c) Agencies should avoid the use of floppy disks for the exclusive long-term storage of permanent or unscheduled electronic records.

(d) Agencies shall ensure that all authorized users can identify and retrieve information stored on diskettes, removable disks, or tapes by establishing or adopting procedures for external labeling.

(e) Agencies shall ensure that information is not lost because of changing technology or deterioration by converting storage media to provide compatibility with the agency's current hardware and software. Before conversion to a different medium, agencies must determine that the authorized disposition of the electronic records can be implemented after conversion.

(f) Agencies shall back up electronic records on a regular basis to safeguard against the loss of information due to equipment malfunctions or human error. Duplicate copies of permanent or unscheduled records shall be maintained in storage areas separate from the location of the records that have been copied.

(g) *Maintenance of magnetic computer tape.*—(1) Agencies shall test magnetic computer tapes no more than 6 months prior to using them to store electronic records that are unscheduled or scheduled for permanent retention. This test should verify that the tape is free of permanent errors and in compliance with National Institute of Standards and Technology or industry standards.

(2) Agencies shall maintain the storage and test areas for computer magnetic tapes containing permanent and unscheduled records at the following temperatures and relative humidities:

Constant temperature—62 to 68 °F.
Constant relative humidity—35% to 45%

(3) Agencies shall rewind under controlled tension all tapes containing unscheduled and permanent records every 3½ years.

(4) Agencies shall annually read a statistical sample of all reels of magnetic computer tape containing permanent and unscheduled records to identify any loss of data and to discover and correct the causes of data loss. In tape libraries with 1800 or fewer reels, a 20% sample or a sample size of 50 reels, whichever is larger, should be read. In tape libraries with more than 1800 reels, a sample of 384 reels should be read. Tapes with 10 or more errors should be replaced and, when possible, lost data shall be restored. All other tapes which might have been affected by the same cause (i.e., poor quality tape, high usage, poor environment, improper handling) shall be read and corrected as appropriate.

(5) Agencies shall copy permanent or unscheduled data on magnetic tapes before the tapes are 10 years old onto tested and verified new tapes.

(6) External labels (or the equivalent automated tape management system)

for magnetic tapes used to store permanent or unscheduled electronic records shall provide unique identification for each reel, including the name of the organizational unit responsible for the data, system title, and security classification, if applicable. Additionally, the following information shall be maintained for (but not necessarily attached to) each reel used to store permanent or unscheduled electronic records: file title(s); dates of creation; dates of coverage; the recording density; type of internal labels; volume serial number, if applicable; number of tracks; character code/software dependency; information about block size; and reel sequence number, if the file is part of a multi-reel set. For numeric data files, include record format and logical record length, if applicable; data set name(s) and sequence, if applicable; and number of records for each data set.

(7) Agencies shall prohibit smoking and eating in magnetic computer tape storage libraries and test or evaluation areas that contain permanent or unscheduled records.

(h) Maintenance of direct access storage media.

(1) Agencies shall issue written procedures for the care and handling of direct access storage media which draw upon the recommendations of the manufacturers.

(2) External labels for diskettes or removable disks used when processing or temporarily storing permanent or unscheduled records shall include the following information: name of the organizational unit responsible for the records, descriptive title of the contents, dates of creation, security classification, if applicable, and identification of the software and hardware used.

§ 1234.30 Retention of electronic records.

Agencies shall establish policies and procedures to ensure that electronic records and their documentation are retained as long as needed by the Government. These retention procedures shall include provisions for:

(a) Scheduling the disposition of all electronic records, as well as related documentation and indexes, by applying General Records Schedules (particularly GRS 20 or GRS 23) as appropriate or submitting an SF 115, Request for Records Disposition Authority, to NARA (see part 1228 of this chapter). The information in electronic records systems, including those operated for the Government by a contractor, shall be scheduled as soon as possible but no later than one year after implementation of the system.

(b) Transferring a copy of the electronic records and any related documentation and indexes to the National Archives at the time specified in the records disposition schedule in accordance with instructions found in § 1228.188 of this chapter. Transfer may take place at an earlier date if convenient for both the agency and the National Archives and Records Administration.

(c) Establishing procedures for regular recopying, reformatting, and other necessary maintenance to ensure the retention and usability of electronic records throughout their authorized life cycle (see § 1234.28).

§ 1234.32 Destruction of electronic records.

Electronic records may be destroyed only in accordance with a records disposition schedule approved by the Archivist of the United States, including General Records Schedules. At a minimum each agency shall ensure that:

(a) Electronic records scheduled for destruction are disposed of in a manner that ensures protection of any sensitive, proprietary, or national security information.

(b) Magnetic recording media previously used for electronic records containing sensitive, proprietary, or national security information are not reused if the previously recorded information can be compromised by reuse in any way.

PART 1236—VITAL RECORDS DURING AN EMERGENCY

Sec.

1236.1 Purpose.
1236.2 Background.
1236.4 Categories of vital records.

Sec.
1236.6 Program considerations.
1236.8 Vital records storage at Federal records centers.

AUTHORITY: 44 U.S.C. 2104(a).

EDITORIAL NOTE: Nomenclature changes to part 1236 appear at 50 FR 15725, 15728, Apr. 19, 1985.

§ 1236.1 Purpose.

This part provides for the selection and protection of vital records required in the development of Federal agency emergency preparedness programs.

[43 FR 43461, Sept. 26, 1978. Redesignated and amended at 50 FR 15723, 15725, Apr. 19, 1985]

§ 1236.2 Background.

(a) *General.* The original requirements for vital operating records protection programs were set forth in Bureau of the Budget Bulletins No. 51-14, May 22, 1951, and No. 52-5, September 6, 1951. Subsequent Government organizational and functional changes caused revisions in reporting requirements. The annual report reflecting the status of the vital records program of each Federal agency is no longer required.

(b) *Criteria and guides.* The Federal vital records program includes two basic categories: Emergency operating records and rights and interests records. The NARA Records Management Handbook entitled "Federal Archives and Records Center" provides further clarification of the two categories of records.

[43 FR 43461, Sept. 26, 1978. Redesignated at 50 FR 15723, Apr. 19, 1985]

§ 1236.4 Categories of vital records.

The following definitions are pertinent to the development of a vital records program:

(a) *Emergency operating records* are records vital to the essential functions of the Federal Government for the duration of an emergency if the country is attacked. These records include those necessary for the military effort; the mobilization and protection of material and manpower resources, of services, and of systems; the maintenance of public health, safety, and order; and the conduct of essential civil defense activities. These records must be available as needed at or in the vicinity of emergency operating centers.

(b) *Rights and interests records* are records essential to the preservation of the legal rights and interests of individual citizens and their Government. These records include such groups as social security records, retirement records, payroll records, insurance records, and valuable research records. These records require protection, but storage points do not have to be at or in the vicinity of emergency operating centers.

[43 FR 43461, Sept. 26, 1978. Redesignated and amended at 50 FR 15723, 15725, Apr. 19, 1985]

§ 1236.6 Program considerations.

(a) Strong management support is required within each department and agency to meet the records needs of emergency preparedness. Sound judgment must be exercised in identifying records essential to an agency's effectiveness during an emergency. Agencies should be aware that during an emergency those who will be using records may not be the same as those who refer to them under normal conditions.

(b) In identifying its vital records, an agency should keep the volume of records at a manageable level, and retrieval procedures should require only routine effort to locate needed information. The program should be simple and concise, avoiding complex and difficult procedures whenever possible.

(c) An agency's vital records protection program should be reviewed on an annual basis. The program may be considered effective if the records selected for inclusion are current, complete, adequately protected, accessible, and immediately usable.

[43 FR 43461, Sept. 26, 1978. Redesignated at 50 FR 15723, Apr. 19, 1985]

§ 1236.8 Vital records storage at Federal records centers.

(a) The National Archives provides for the storage, protection, and servicing of rights and interests vital records. The facilities of all Federal records centers, regardless of geographic location, are available for agencies desiring to store these records. In addition to storage space for paper records, each NARA records center has environmentally controlled space suitable for the storage of vital records on magnetic tape and photographic film.

(b) Agencies may make arrangements for the transfer of their rights and interests records to any of the records centers by contacting the appropriate center director or the Office of Federal Records Centers (mailing address: National Archives (NC), Washington, DC 20408).

[43 FR 43461, Sept. 26, 1978. Redesignated and amended at 50 FR 15723, 15725, Apr. 19, 1985, further amended at 51 FR 23536, June 30, 1986]

PART 1238—PROGRAM ASSISTANCE

Sec.
1238.1 Scope of part.
1238.2 Requests for assistance.

AUTHORITY: 44 U.S.C. 2904 and 3101.

§ 1238.1 Scope of part.

The National Archives and Records Administration publishes handbooks, conducts workshops and other training sessions, and furnishes information and guidance to Federal agencies about the creation of records, their maintenance and use, and their disposition.

[50 FR 26940, June 28, 1985]

§ 1238.2 Requests for assistance.

Agencies desiring information or assistance related to any of the areas covered by Subchapter B should contact the Agency Services Division, Office of Records Administration, National Archives (NIA), Washington, DC 20408. Agency field organizations may contact the director of the Federal records center serving the field organization's records (see § 1228.150).

[50 FR 26940, June 28, 1985]

SUBCHAPTER C—PUBLIC AVAILABILITY AND USE

PART 1250—PUBLIC AVAILABILITY OF NARA ADMINISTRATIVE RECORDS AND INFORMATIONAL MATERIALS

Sec.
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Subpart A—General Provisions

1250.10 Purpose.
1250.12 Availability of records.
1250.14 Applying exemptions.
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Subpart B—Publication of General Agency Information and Rules in the Federal Register

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1250.70 Categories of records exempt from disclosure under FOIA.

Sec.

Subpart G—Predisclosure Notification Procedures for Commercial Information

1250.75 Predisclosure notification procedures for commercial information.

Subpart H—Subpoenas and Other Legal Demands for NARA Administrative Records

1250.80 Service of subpoena and other legal demands for NARA administrative records.

AUTHORITY: 44 U.S.C. 2104(a); 5 U.S.C. 552; E.O. 12600.

SOURCE: 50 FR 27202, July 1, 1985, unless otherwise noted.

§ 1250.1 Scope of part.

This part sets forth policies and procedures concerning the availability to the public of all records and informational materials generated, developed, or held by NARA with respect to:

(a) NARA organization and functions and regulations of general applicability;

(b) NARA final orders and staff manuals; and

(c) Operational and other appropriate agency records.

This part also covers exemptions from disclosure of these records; procedures for the guidance of the public in inspecting and obtaining copies of NARA records; and the service of a subpoena or other legal demand with respect to NARA administrative records.

Subpart A—General Provisions

§ 1250.10 Purpose.

This part implements the provisions of the Freedom of Information Act ("FOIA"), 5 U.S.C. 552, as amended. This part prescribes procedures by which the public may inspect and obtain copies of NARA records under FOIA.

§ 1250.12 Availability of records.

NARA administrative records are available to the greatest extent possible in keeping with the spirit and intent of the FOIA. Requesters should address their requests to the office designated in § 1250.54. The person making the request need not have a particular interest in the subject matter, nor provide justification for the request except to the extent necessary to determine the requester's category for fee assessment purposes as explained in § 1250.42. The FOIA requirement that records be available to the public refers only to records in existence when the request is submitted. The Act does not require an agency to compile or create information or records in response to a FOIA request.

[52 FR 29519, Aug. 10, 1987]

§ 1250.14 Applying exemptions.

NARA may deny a request for a NARA record if the record falls within an exemption of FOIA as outlined in subpart E of this part. Except when a record is classified or when disclosure would violate any Federal law, the authority to withhold a record is permissive rather than mandatory. NARA will not withhold a record unless there is a compelling reason to do so. In the absence of a compelling reason, NARA will disclose a record although it otherwise is subject to exemption.

§ 1250.16 Records of other agencies.

(a) *Other agencies' records managed by NARA.* The availability of records of other agencies in the physical custody of NARA and records which have been accessioned into the National Archives of the United States and Federal Records Centers is governed by Part 1254 of this chapter. (Availability of Records and Donated Historical Materials.)

(b) *Current records of other agencies.* If NARA receives a request to make available current records that are the primary responsibility of another agency, NARA shall refer the request to the agency concerned for appropriate action. NARA shall inform the requestor that NARA has forwarded the request to the responsible agency.

Subpart B—Publication of General Agency Information and Rules in the Federal Register

§ 1250.20 Published information and rules.

In accordance with 5 U.S.C. 552(a)(1), NARA publishes in the FEDERAL REGISTER, for the guidance of the public, the following general information concerning NARA:

(a) A description of its central and field organization and the established places at which, the employees from whom, and the methods whereby the public may obtain information, make submittals or requests, or obtain decisions;

(b) Statements of the general courses and methods by which functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(c) Rules of procedure, descriptions of forms available or the places where forms may be obtained, and instructions on the scope and content of all papers, reports, and examinations;

(d) Substantive rules of general applicability adopted as authorized by law and statements of general policy or interpretations of general applicability formulated and adopted by NARA;

(e) Each amendment, revision, or repeal of the materials described in this section.

Subpart C—Availability of Orders, Regulations, and Manuals

§ 1250.30 General.

NARA makes available for public inspection and copying the materials described in paragraph (a)(2) of the FOIA (5 U.S.C. 552(a)(2)), which are listed in § 1250.32, and an Index of those materials as described in § 1250.34, at the National Archives Building located at 7th and Pennsylvania Avenue, NW., Washington, DC. Copying services are available at fees specified in § 1250.40.

[52 FR 29519, Aug. 10, 1987]

§ 1250.32 Available materials.

NARA materials available under this Subpart C are as follows:

(a) NARA orders;

(b) Written statements of NARA policy that are not published in the FEDERAL REGISTER;

(c) Administrative staff manuals and instructions to staff affecting a member of the public unless these materials are promptly published and copies offered for sale.

§ 1250.34 Index.

NARA will maintain and make available for public inspection and copying current indexes regarding any matter issued, adopted, or promulgated after July 4, 1967, and described in § 1250.32. NARA will publish quarterly and make available copies of each index or supplement thereto. The index will be maintained for public inspection by the Office of Management and Administration, National Archives (NA), Washington, DC 20408. The public may write to the Program Policy and Evaluation Division, National Archives (NAA), Washington, DC 20408, to request a copy of the index.

[51 FR 23416, June 27, 1986]

§ 1250.36 Public inspection and copying.

NARA will make records not subject to exemption available at the NARA facility where the records are located during normal working hours (see Part 1253 of this chapter), or at an alternative NARA facility as mutually agreed upon by NARA and the requester. NARA will agree to show the originals or a copy of the originals if the originals are located at another NARA facility, make one copy available at a fee, or a combination of these alternatives.

Subpart D—Fees

SOURCE: 52 FR 29519, Aug. 10, 1987, unless otherwise noted.

§ 1250.37 Definitions.

Commercial-use requester means a requester seeking information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

Educational-institution request means a request from a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education which operates a program or programs of scholarly research. The request must serve the scholarly research goals of the institution or school rather than the individual goals of the requester. A request from a student in furtherance of the completion of a course of instruction does not qualify as an educational institution request.

Freelance-journalist means an individual who qualifies as a representative of the news media because the individual can demonstrate a solid basis for expecting publication through a news organization, even though not actually in its employ. A publication contract would be the clearest proof of a solid basis, but the individual's past publication history may also be considered in demonstrating this solid basis.

News media representative means a person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term *news* means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of *news*) who make their products available for purchase or subscription by the general public.

Non-commercial scientific institution means an institution that is not operated on a basis that furthers the commercial, trade, or profit interests of any person or organization, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

Other requesters means any individual who is not a commercial-use requester, a representative of the news media, a freelance-journalist, or one associated with an educational or noncommercial scientific institution whose research activities conform to the definition above. This term does not include requests from records subjects for records about themselves filed in NARA's systems of records; such requests are handled in accordance with 36 CFR Part 1202.

§ 1250.38 Search fees.

(a) The search fee is $10 per hour or fraction thereof when clerical/administrative staff manually search for records responsive to a request, and $18 per hour or fraction thereof when NARA must use professional staff to manually search for the requested records because clerical/administrative staff would be unable to locate them. The search fee for computerized searches is the wage (plus 16 percent fringe benefits) of the computer operator per hour or fraction thereof plus the actual computer operating costs.

(b) NARA may charge for search time spent in trying to locate NARA records which are responsive to the request regardless of whether or not any responsive records are identified. NARA will not engage in line-by-line search when merely duplicating an entire document is feasible and would prove to be a less expensive and quicker method of complying with the request.

(c) When the search includes nonpersonnel expenditures to locate and identify requested information (e.g., transport or travel costs, etc.), the applicable fee is the direct cost to NARA.

(d) NARA will charge for the aggregate of all time spent in searching for documents responsive to a series of requests when NARA reasonably believes a requester or group of requesters is dividing a request into a series of requests to evade assessment of applicable fees.

§ 1250.39 Review fees.

(a) NARA will not charge review fees for time spent resolving general legal or policy issues regarding the application of exemptions.

(b) The review fee is $24 per hour or fraction thereof, for time spent in activities set forth in paragraphs (d)(1), (d)(2), and (d)(3) of this section.

(c) NARA will charge only commercial-use requesters review fees.

(d) NARA may charge for the time spent engaged in the following activities to determine "review time" subject to review fees:

(1) Time spent examining all documents that are responsive to a request to determine whether any portion of any document is exempt from mandatory disclosure regardless of whether any information is ultimately withheld.

(2) Time spent excising information and otherwise preparing records for release (except preparing the copies that will be made available to the requester).

(3) The aggregate of all time spent in reviewing documents to determine whether any portion of any document is permitted to be withheld when NARA reasonably believes that a requester or group of requesters is dividing a request into a series of requests to evade the assessment of applicable fees.

(e) A fee of $.20 per page will be charged for making working copies of pages from which information must be excised.

§ 1250.40 Reproduction fees.

(a) *Electrostatic reproductions*—(1) *Prepared by NARA staff.* Paper reproductions of NARA paper records made by NARA staff will be furnished for $.20 a page.

(2) *Self-service.* At NARA facilities with self-service electrostatic copiers, requesters may make reproductions of released documents for $.10 a page.

(b) *Reproductions from electromagnetic media.* Direct costs to NARA for staff time for programming, computer operations, and printouts or magnetic tape to reproduce the requested data will be charged requesters.

(c) *Other media.* The cost for reproduction of records from or to other media will be provided upon request. NARA will charge the direct costs to NARA of providing the reproduction.

§ 1250.41 Other fees.

(a) *Mailing costs.* Actual postage and shipping costs will be charged when the requester asks for special methods such as express mail.

(b) *Certification.* A fee of $2.00 will be charged for each certification.

(c) *Interest.* Interest charges on unpaid fees will be charged beginning on the 31st day after billing at the rate prescribed in 31 U.S.C. 3717, and will accrue from the date of the billing.

§ 1250.42 Fees applicable to categories of requesters.

(a) *NARA policy.* (1) NARA will assess fees on the basis of the category of the requester as defined in § 1250.37. The initial request should include sufficient information for NARA to determine the category of the requester. If sufficient information is not provided for NARA to make a determination, NARA will seek clarification from the requester before assigning a requester to a specific category and before beginning to process the request. If a requester disagrees with a NARA category-of-requester determination, this determination may be appealed, following the procedures set forth in § 1250.58.

(2) NARA will not assess fees otherwise chargeable if the aggregate of all applicable fees is less than $10.

(3) If NARA estimates that total applicable search and reproduction charges are likely to exceed $25, NARA will notify the requester of the estimated amount of fees, unless the requester has indicated in advance a willingness to pay fees as high as those anticipated. The requester will be offered the opportunity to confer with a NARA official with the object of reformulating the request to meet the requester's need at a lower cost.

(4) For those requests eligible for 2 hours free search time, NARA may begin charging for computerized search time once the cost of the search (including the operator time and the cost of operating the computer to process the request) equals the equivalent dollar amount of two hours of a manual search by a clerical/administrative employee.

(b) *Commercial-use requesters.* Commercial-use requesters, as defined in § 1250.37, who make requests for reasonably described records will be assessed the following fees:

(1) Search fees as set forth in § 1250.38;

(2) Review fees as set forth in § 1250.39

(3) Reproduction fees as set forth in § 1250.40; and

(4) Other fees as set forth in § 1250.41, as applicable.

(c) *Educational and non-commercial scientific institution requesters.* When NARA receives a request from a qualified educational institution or a noncommercial scientific institution requester, as defined in § 1250.37, for reasonably described records, NARA will assess:

(1) Reproduction costs as set forth in § 1250.40, except the first 100 pages or their equivalent will be provided free; and

(2) Other costs as set forth in § 1250.41, if applicable. NARA will not charge search or review fees.

(d) *Requesters who are qualified representatives of the news media or qualified freelance-journalists.* When NARA receives a request from a qualified representative of the news media or freelance-journalist, as defined in § 1250.37, for reasonably described records, NARA will assess reproduction fees as set forth in § 1250.40, except the first 100 pages or their equivalent will be provided free. NARA will not charge search or review fees.

(e) *Requests from other requesters.* When NARA receives a request from an individual defined as "other requesters" in § 1250.37 for reasonably described records, NARA will assess:

(1) Search fees as set forth in § 1250.38 for any search time in excess of two hours of manual search or its computerized search equivalent;

(2) Reproduction fees as set forth in § 1250.40, as applicable, except the first 100 pages or their equivalent will be provided free; and

(3) Other fees as set forth in § 1250.41, if applicable.

§ 1250.43 Prepayment of fees.

(a) NARA may require prepayment of all fees when:

(1) Applicable fees are likely to exceed $250, and

(i) The requester has no history of payment;

(ii) After notifying a requester who has a history of prompt payment of FOIA fees of the estimated fees, NARA does not receive satisfactory assurances of full payment: Or

(2) A requester has previously failed to pay a fee and interest charges within 30 days of the date of billing.

(b) The amount of the prepayment will be the anticipated fees for the current request, and if applicable, any previously assessed fees and any interest which have not been received by NARA.

§ 1250.44 Waiver or reduction of fees.

(a) Any request for waiver or reduction of a fee shall be included in the initial letter requesting access to NARA records under § 1250.54. The waiver or reduction request should explain how release of the requested information is likely to benefit the public by contributing significantly to the public understanding of the operations or activities of the government, and why the information is not primarily in the commercial interest of the requester.

(b) Documents shall be furnished without a fee or at a reduced fee if NARA determines that the information is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(c) If NARA denies a request for a waiver or reduction of a fee, the requester may appeal this denial, following the procedures set forth in § 1250.58.

§ 1250.45 Form of payment.

Requesters shall pay fees by check or money order payable to: "National Archives and Records Administration" and addressed to the official named by NARA in its correspondence.

§ 1250.46 Payment collection.

As provided for in the Debt Collection Act of 1982 (Pub. L. 97-365), NARA may employ collection agencies and may disclose information concerning nonpayment of fees to consumer reporting agencies when fees have not been paid within 31 days of billing.

Subpart E—Described Records

§ 1250.50 General.

(a) Except for records made available in accordance with Subparts B and C of this part, NARA promptly will make records available to a requester when the request describes the records so as to enable a professional NARA employee to identify and locate the record(s) unless NARA invokes an exemption in accordance with Subpart F of this part. NARA will consult with the requester, when necessary, to more specifically identify the requested record(s).

(b) Upon receipt of a request that does not reasonably describe the records requested, NARA may contact the requester to seek a more specific description. The 10-workday time limit set forth in § 1250.56 will not start until NARA receives a request reasonably describing the records.

[50 FR 27202, July 1, 1985, as amended at 52 FR 29521, Aug. 10, 1987]

§ 1250.52 Procedures for making records available.

This section sets forth initial procedures for making requested records available. These procedures do not apply to records of other agencies that have been transferred to NARA in accordance with 44 U.S.C. 2107 and 3103; in those cases, the procedures in Part 1254 of this chapter govern.

§ 1250.54 Submission of requests for described records.

For records located in NARA, the requester shall submit a request in writing to the NARA FOIA Officer, National Archives (NAA), Washington, DC 20408. Requests shall include the words "Freedom of Information Request" prominently marked on both the face of the request letter and the envelope. The 10-workday time limit for agency decisions set forth in § 1250.56 begins with receipt of the request by the NARA office which maintains the requested records. A requester who has questions concerning a FOIA request may consult the NARA FOIA Officer.

§ 1250.56 Response to initial request.

NARA shall mail a response to an initial FOIA request within 10 workdays (that is, excluding Saturdays, Sundays, and legal Federal holidays) after receipt of a request by the NARA office that maintains the records. In unusual circumstances, NARA will inform the requester of the agency's need to extend the time to respond to the request.

§ 1250.58 Appeal with NARA.

(a) A requester who receives a denial in whole or in part of a request may appeal that decision within NARA to the appropriate NARA FOIA Appeal Official. If the denial was signed by the Assistant Archivist for Management and Administration, the appeal shall be addressed to the Deputy Archivist of the United States, National Archives (ND), Washington, DC 20408. If the denial was signed by the Inspector General, the appeal shall be addressed to the Archivist of the United States, National Archives (N), Washington, DC 20408.

(b) The NARA FOIA Appeal Official must receive an appeal no later than 35 calendar days after the date of the NARA letter of denial.

(c) The requester shall appeal in writing and include a brief statement of the reasons why NARA should release the records, or in the case of a requester category determination, why the requester should be considered to be a member of a different category, or, if an appeal from a denial of a fee reduction or waiver request, how disclosure of the information is likely to contribute significantly to public understanding of the operations or activities of government and is not a request primarily intended to benefit the commerical, trade, or profit interests of the requester. The appeal letter shall include the words "Freedom of Information Appeal" on both the face of the appeal letter and the envelope, and the requester shall enclose with the appeal letter a copy of the initial request and denial. NARA has 20 workdays after receipt of an appeal to make a determination with respect to the appeal. The 20-workday time limit begins when the NARA FOIA Appeal Official receives the appeal.

(d) A requester who has received a denial of an appeal may seek judicial review of NARA's decision in the United States district court in the district in which the requester resides or has a principal place of business, or where the records are situated, or in the District of Columbia.

[50 FR 27202, July 1, 1985, as amended at 51 FR 23416, June 27, 1986; 52 FR 29521, Aug. 10, 1987; 54 FR 32068, Aug. 4, 1989]

§ 1250.60 Extension of time limits.

In unusual circumstances the NARA FOIA Appeal Official may extend the time limits prescribed in § 1250.58. If necessary, more than one extension of time may be taken. However, the total extension of time shall not exceed 10 workdays with respect to a particular request. The extension may be divided between the initial and appeal stages or within a single stage. NARA shall provide a written notice to the requester of any extension of time limits.

[50 FR 27197, July 1, 1985, as amended at 54 FR 32068, Aug. 4, 1989]

Subpart F—Exemptions

§ 1250.70 Categories of records exempt from disclosure under the FOIA.

(a) 5 U.S.C. 552(b) provides that the requirements of the FOIA do not apply to matters that are:

(1) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defence or foreign policy and that are, in fact, properly classified under the Executive order;

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by statute, other than the Privacy Act, provided that the statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person that are privileged or confidential;

(5) Interagency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; and

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) NARA will provide any reasonably segregable portion of a record to a requester after deletion of the portions that are exempt under this section.

(c) NARA will invoke no exemption under this section if the requested records would be available under the Privacy Act of 1974 and NARA implementing regulations in part 1202 of this chapter, or if disclosure would cause no demonstrable harm to any public or private interest.

[50 FR 27202, July 1, 1985, as amended at 52 FR 29521, Aug. 10, 1987]

Subpart G—Predisclosure Notification Procedures for Commercial Information.

§ 1250.75 Predisclosure notification procedures for commercial information.

(a) *General.* Commercial information provided to NARA shall not be disclosed to the public except in accordance with this subpart.

(b) *Definitions.*

Potentially confidential commercial information means records provided to NARA by a submitter that may contain material exempt from release under 5 U.S.C. 552(b)(4) because disclosure could reasonably be expected to cause the submitter substantial competitive harm.

Submitter means any person or entity providing potentially confidential commercial information to an agency. The term *submitter* includes, but is not limited to, corporations, state governments, and foreign governments.

(c) *Designation of potentially confidential commercial information.* Submitters of commercial information may designate the information as commercially confidential. The designation must:

(1) Be made by the submitter when the information is submitted to NARA or within 30 workdays thereafter;

(2) Specify precisely which information is claimed as commercially confidential;

(3) Be made in good faith;

(4) Be supported by a certification by the submitter that the information has not been published or previously officially disclosed to the public.

(d) *Notice of receipt of a request to release information.* (1) NARA shall give the submitter prompt written notice of receipt of a FOIA request for the submitter's potentially confidential commercial information when:

(i) The submitter, in good faith, has designated the material as commercially confidential in accordance with paragraph (c) of this section; and

(ii) The FOIA request is received within 10 years of the date of submission.

(2) The written notice of receipt of an FOIA request shall either describe the potentially confidential commercial information requested, or provide copies of the records containing the information. The notice shall be mailed to the last known address of the submitter.

(3) When notice is given to a submitter pursuant to this section, NARA shall inform the requester that:

(i) The notice has been sent to the submitter;

(ii) That NARA's response to the request may be delayed beyond the limitations specified in 5 U.S.C. 552(a)(6)(A) and (B) to allow for time to notify the submitter, and to consider any response; and

(iii) That the delay may be considered a denial of access to records and the requester may seek judicial review. However, the requester shall be invited to agree to a voluntary extension of time so that NARA may consider any claims of confidentiality by the submitter.

(e) *Opportunity to object to disclosure.* (1) Through the notice described in paragraph (d) of this section, NARA shall afford a submitter a reasonable amount of time to provide NARA:

(i) A detailed statement of any objections to disclosure. The statement shall specify which information is claimed to be of a confidential commercial nature, and shall specify all grounds for withholding any of the information under the exemptions of the FOIA. If exemption (b)(4) of the FOIA is cited, the statement shall explain how the release of the information can be reasonably expected to cause substantial competitive harm to the submitter; and

(ii) Certification that the information has not been published or previously disclosed to the public.

(2) The statement provided pursuant to this subsection may itself be subject to disclosure under the FOIA

(f) *Notice of intent to disclose.* (1) NARA shall consider any good faith designations of commercial confidentiality made when the information was initially submitted to NARA, and the submitter's timely objections and specific grounds for nondisclosure received in response to the notice of receipt of a request prior to determining whether to disclose the information in question.

(2) When NARA decides to disclose commercial information over the objections of a submitter, whether in response to a request to release or as the result of an appeal of a denial of access, NARA shall provide the submitter a written notice which:

(i) States the reasons why the submitter's objections were not sustained;

(ii) Describes or contains a copy of the information to be disclosed; and

(iii) Specifies a disclosure date. NARA shall inform the submitter that disclosure will be made on the specified disclosure date, unless barred by court order.

(3) NARA shall inform the requester that such notice has been given to the submitter and of the proposed disclosure date.

(4) When NARA and the submitter are in agreement concerning disclosure, disclosure shall take place as soon as possible.

(5) The notice of receipt of a request shall serve as the notice of intent to disclose when the submitter fails to respond to the initial notice within a reasonable period of time.

(g) *Notice of lawsuit.* NARA will promptly inform the requester and the submitter of any law suit filed by the other concerning possible disclosure.

(h) *Exceptions to notice requirement.* The notice requirements of this section do not apply when:

(1) NARA determines that the information should not be disclosed in accordance with one or more FOIA exemptions;

(2) The information has been published or officially made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) NARA has no substantial reason to believe that disclosure would result in competitive harm.

[54 FR 32068, Aug. 4, 1989]

Subpart H—Subpoenas or Other Legal Demands for NARA Administrative Records

§ 1250.80 Service of subpoena or other legal demand for NARA administrative records.

(a) A subpoena duces tecum or other legal demand for the production of NARA administrative records should be addressed to the Director of the Legal Services Staff, National Archives (NSL), Washington, DC 20408, with respect to NARA records.

(b) The Archivist of the United States and the Director of the Legal Services Staff are the only NARA employees authorized to accept, on behalf of NARA, service of a subpoena duces tecum or other legal demands for NARA administrative records.

(c) Regulations concerning service of a subpoena or other legal demand for records accessioned into the National Archives of the United States, records of other agencies in the custody of the Federal records centers, and donated historical materials are located at part 1254 of this chapter.

[50 FR 27202, July 1, 1985. Redesignated at 54 FR 32068, Aug. 4, 1989]

PART 1252—PUBLIC USE OF RECORDS, DONATED HISTORICAL MATERIALS, AND FACILITIES; GENERAL

Sec.
1252.1 Scope.
1252.2 Definitions.

AUTHORITY: 44 U.S.C. 2104(a).

EDITORIAL NOTE: Nomenclature changes to part 1252 appear at 50 FR 15726, 15728, Apr. 19, 1985.

§ 1252.1 Scope.

This subchapter prescribes rules and procedures governing the public use of records and donated historical materials in the custody of the National Archives and Records Administration (NARA) but does not apply to current operating records of the Administration. This subchapter also prescribes rules and procedures governing the public use of certain facilities of the Administration.

[40 FR 7924, Feb. 24, 1975. Redesignated at 50 FR 15723, Apr. 19, 1985]

§ 1252.2 Definitions.

The following definitions are established for terms used in this subchapter.

Archives means official records that have been determined by NARA to have sufficient historical or other value to warrant their continued preservation by the U.S. Government, and have been accepted for deposit with the National Archives of the United States.

Director means the head of a Presidential library, the head of an Office of the National Archives division, branch, or unit responsible for servicing records, or the head of a Federal center.

Donated historical materials means books, correspondence, documents, papers, pamphlets, magnetic tapes, pictures, photographs, plats, maps, films, motion pictures, sound recordings, and other documental media having historical or commemorative value accepted by NARA from a source other than an agency of the U.S. Government.

Federal records center include the Washington National Records Center, National Personnel Records Center, and the Federal Records Centers located at National Archives Centers listed in § 1253.6.

Federal records center records (hereafter referred to as "FRC records") means records which, pending their deposit with the National Archives of the United States or their disposition in any other manner authorized by law, have been transferred to a Federal records center operated by NARA.

Records means records, or microfilm copies of records, transferred to the National Archives and Records Administration under 44 U.S.C. 2107, 3103; namely archives and Federal records center records as the terms are defined in § 1252.2. The term "records" does not include current operating records of the National Archives and Records Administration, the public availability of which is governed by Part 1250 of this chapter, or donated historical materials, as defined in this subchapter.

Researcher means a person who has applied for access to records or donated historical materials, in accordance with § 1254.4, and who has been issued a researcher identification card.

[33 FR 4885, Mar. 22, 1968, 42 FR 13022, Mar. 8, 1977, and 49 FR 33253, Aug. 22, 1984. Redesignated and amended at 50 FR 15723, 15726, Apr. 19, 1985]

PART 1253—LOCATION OF RECORDS AND HOURS OF USE

Sec.

1253.1 National Archives Building.
1253.2 Pickett Street facility.
1253.3 Presidential libraries.
1253.4 Washington National Records Center.
1253.5 National Personnel Records Center.
1253.6 Federal Records Centers and National Archives Field Branches.

AUTHORITY: 44 U.S.C. 2104(a).

EDITORIAL NOTE: Nomenclature changes to part 1253 appear at 50 FR 15726, 15728, Apr. 19, 1985.

§ 1253.1 National Archives Building.

The National Archives Building is located at Seventh Street and Pennsylvania Avenue, NW, Washington, DC 20408. Hours: For the Central Research Room and Microfilm Research Room, 8:45 a.m. to 10 p.m. Monday through Friday; 8:45 a.m. to 5:15 p.m. on Saturday. For other research rooms, 8:45 a.m. to 5 p.m., Monday through Friday.

[52 FR 23821, June 25, 1987]

§ 1253.2 Pickett Street facility.

Nixon Presidential materials (see Subchapter F) and holdings of the Cartographic and Architectural Branch are located at the Pickett Street facility, 841-881 S. Pickett Street, Alexandria, VA. Mailing address: National Archives (NLN) or National Archives (NNSC), Washington, DC 20408. Hours: 8 a.m. to 4:30 p.m., Monday through Friday.

[50 FR 15726, Apr. 19, 1985; 50 FR 20760, May 20, 1985]

§ 1253.3 Presidential libraries.

(a) Herbert Hoover Library, Parkside Drive, West Branch, IA 52358. Hours: 9 a.m. to 5 p.m., Monday through Friday.

(b) Franklin D. Roosevelt Library, 259 Albany Post Road, Hyde Park, NY 12538. Hours: 9 a.m. to 5 p.m., Monday through Friday.

(c) Harry S. Truman Library, U.S. Highway 24 at Delaware Street, Independence, MO 64050. Hours: 9 a.m. to 5 p.m., Monday through Friday.

(d) Dwight D. Eisenhower Library, Southeast Fourth Street, Abilene, KS 67410. Hours: 9 a.m. to 5 p.m., Monday through Friday.

(e) John Fitzgerald Kennedy Library, Columbia Point, Boston, MA 02125. Hours: 9 a.m. to 5 p.m., Monday through Friday.

(f) Lyndon Baines Johnson Library, 2313 Red River Street, Austin, TX 78705. Hours: 9 a.m. to 5 p.m., Monday through Friday.

(g) Gerald R. Ford Library, 1000 Beal Avenue, Ann Arbor, MI 48109-2114. Hours: 9 a.m. to 5 p.m., Monday through Friday.

(h) Gerald R. Ford Museum, 303 Pearl Street, NW, Grand Rapids, MI 49504. Hours: 9 a.m. to 5 p.m., Monday through Friday.

(i) Jimmy Carter Library, One Copenhill Avenue, Atlanta, GA 30307. Hours: 9 a.m. to 5 p.m., Monday through Friday.

[46 FR 37652, July 22, 1981. Redesignated at 50 FR 15723, Apr. 19, 1985, and amended at 52 FR 23821, June 25, 1987]

§ 1253.4 Washington National Records Center.

Washington National Records Center, 4205 Suitland Road, Suitland, MD. Mailing address: Washington National Records Center, Washington, DC 20409. Hours: 8 a.m. to 4:30 p.m., Monday through Friday.

[40 FR 7927, Feb. 24, 1975. Redesignated at 50 FR 15723, Apr. 19, 1985, and amended at 52 FR 23821, June 25, 1987]

§ 1253.5 National Personnel Records Center.

(a) National Personnel Records Center (military personnel records), 9700 Page Boulevard, St. Louis, MO 63132. Hours: 7:30 a.m. to 4 p.m., Monday through Friday.

(b) National Personnel Records Center (civilian personnel records), 111 Winnebago Street, St. Louis, MO 63118. Hours: 7:30 a.m. to 4 p.m., Monday through Friday.

[40 FR 7927, Feb. 24, 1975. Redesignated at 50 FR 15723, Apr. 19, 1985]

§ 1253.6 Federal Records Centers and National Archives Field Branches.

Except where noted, the Federal Records Center and the National Archives Field Branch in a particular city share the same address and same business hours. Some of the National Archives Field Branches may offer extended research room hours on selected evenings and Saturdays. More specific information on extended hours and services offered during those hours is available from each branch. The hours listed in this section are the minimum hours that each National Archives Field Branch is normally open.

(a) 380 Trapelo Road, Waltham, MA 02154. Hours: 8 a.m. to 4 p.m., Monday through Friday.

(b) Building 22, Military Ocean Terminal, Bayonne, NJ 07002-5388. Hours: 8 a.m. to 4 p.m., Monday through Friday.

(c) 5000 Wissahickon Avenue, Philadelphia, PA 19144 (Federal Records Center only). Hours: 8 a.m. to 4 p.m., Monday through Friday.

(d) 9th and Market Streets, Room 1350, Philadelphia, PA 19107 (National Archives Field Branch only). Hours: 8 a.m. to 5 p.m., Monday through Friday.

(e) 1557 St. Joseph Avenue, East Point, GA 30344. Hours: 8 a.m. to 4 p.m., Monday through Friday.

(f) 3150 Springboro Road, Dayton, OH 45439 (Federal Records Center only). Hours: 8 a.m. to 4 p.m., Monday through Friday.

(g) 7358 South Pulaski Road, Chicago, IL 60629. Hours: 8 a.m. to 4 p.m., Monday through Friday.

(h) 2312 East Bannister Road, Kansas City, MO 64131. Hours: 8 a.m. to 4 p.m., Monday through Friday.

(i) 501 West Felix Street, Fort Worth, TX. Mailing address: P.O. Box 6216, Fort Worth, TX 76115. Hours: 8 a.m. to 4 p.m., Monday through Friday.

(j) Denver Federal Center, Building 48, Denver, CO. Mailing address: P.O. Box 25307, Denver, CO 80225. Hours: 8 a.m. to 4 p.m., Monday through Friday.

(k) 1000 Commodore Drive, San Bruno, CA 94066. Hours: 8 a.m. to 4 p.m., Monday through Friday.

(l) 24000 Avila Road, Laguna Niguel, CA. Mailing address: P.O. Box 6719, Laguna Niguel, CA 92677-6719. Hours: 8 a.m. to 4 p.m., Monday through Friday.

(m) 6125 Sand Point Way, Seattle, WA 98115. Hours: 8 a.m. to 4 p.m., Monday through Friday.

[52 FR 23821, June 25, 1987]

PART 1254—AVAILABILITY OF RECORDS AND DONATED HISTORICAL MATERIALS

Subpart A—General

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1254.2 Location of records and hours of use.
1254.4 Research procedures.
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1254.96 Microfilm preparation.
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1254.102 Rescinding permission.

AUTHORITY: 44 U.S.C. 2101-2118, 5 U.S.C. 552, and E.O. 12600.

EDITORIAL NOTE: Nomenclature changes to part 1254 appear at 50 FR 15726, 15728, Apr. 19, 1985.

Subpart A—General

§ 1254.1 General provisions.

(a) Researchers will normally use records in designated research rooms only.

(b) Original records will not normally be made available when microfilm copies are available.

(c) Persons seeking information that is published and readily available will normally be referred to a public library.

(d) A director may require that researchers under the age of 16 years be accompanied by an adult researcher who agrees in writing to be present when the records are used and to be responsible for compliance with the research room rules set forth in subpart B.

(e) Requests received in the normal course of reference service are not considered requests made under the Freedom of Information Act (5 U.S.C. 552). Requests under the act must follow the procedure set forth in subpart C or subpart D.

(f) Certain documents in the custody of NARA are available for exhibit, but are loaned only if the exhibitor meets exacting requirements regarding security, insurance coverage and humidity and temperature control of the exhibit area. These requirements may be obtained by writing to National Archives (NE), Washington, DC 20408.

[33 FR 4885, Mar. 22, 1968, as amended at 40 FR 7924, Feb. 24, 1975; 40 FR 28610, July 8, 1975; 42 FR 13022, Mar. 8, 1977. Redesignated and amended at 50 FR 15723, 15726, Apr. 19, 1985]

§ 1254.2 Location of records and hours of use.

(a) Researchers should identify the location of the records needed. Inquiries may be addressed to the National Archives (NNIR), Washington, DC 20408.

(b) The locations and hours of duty (expressed in local time) of depositories administered by the National Archives and Records Administration are shown in part 1253.

(c) Except for Federal holidays and other times specified by the Archivist or other authorized NARA officials, records will be made available according to the schedule set forth in part 1253.

(d) In addition to the times specified in part 1253, records may be made available at such other times as are authorized by a director.

[40 FR 7925, Feb. 24, 1975, as amended at 42 FR 13022, Mar. 8, 1977; 49 FR 33253, Aug. 22, 1984. Redesignated at 50 FR 15723, Apr. 19, 1985]

§ 1254.4 Research procedures.

(a) Before applying to use records, the researcher should ask the depository holding them whether the records are available, whether there are enough records to warrant a visit, or whether copies would be more practical.

(b) Researchers must apply in person at the depository that has custody of the records.

(c) Researchers who wish to use paper records (not on microfilm) in a depository where the microfilm research room is separate from textual research rooms, must register and provide the information needed to decide which records can be made available. Applicants must have proper identification. If applying for access to large quantities of records or to records that are especially fragile or valuable, the researcher must furnish a letter of reference or introduction when requested. An identification card is issued to each person whose application is approved under § 1254.6.

(d) Researchers using only microfilm, where the microfilm research room is separate from textual research rooms, are not issued an identification card but must register as described in § 1254.10.

(e) In addition to the procedures in this section, researchers desiring to use archives that contain national security classified information must follow procedures in subpart D.

(f) The legal custody and control over access to records that are in the physical custody of the records centers, but not yet accessioned into the National Archives of the United States, remains with the agency. NARA informs researchers of the procedures required to obtain access.

[49 FR 33253, Aug. 22, 1984. Redesignated at 50 FR 15723, Apr. 19, 1985]

§ 1254.6 Researcher identification card.

An identification card is issued to each person whose application is approved to use records other than microfilm. The card is valid at each depository (except the Presidential libraries which issue cards valid only at the issuing library) for 2 years, but it may be renewed upon application. Cards are not transferable and must be produced if requested by a guard or research room attendant.

[49 FR 33254, Aug. 22, 1984. Redesignated at 50 FR 15723, Apr. 19, 1985]

§ 1254.8 Subpoenas and other legal demands for records transferred to the National Archives and Records Administration.

(a) Access to records transferred to a Federal records center is controlled by the instructions and restrictions imposed on NARA by the Federal agency that transferred the records to the Federal records center. NARA will honor a subpoena duces tecum or other legal demand for the production of these records, to the extent required by law, if the transferring agency has imposed no restrictions. When the transferring agency has imposed restrictions, NARA will notify the authority issuing the subpoena or other legal demand that NARA must abide by the agency-imposed restrictions and will request the authority to pursue the matter directly with the transferring agency.

(b) The Archivist of the United States, the Director of the Legal Services Staff (NSL) or his designee, and the Director of the Federal Records Center in which the records are stored are the only NARA officials authorized to accept a subpoena or other legal demand for records transferred to a Federal records center.

(c) A subpoena duces tecum or other legal demand for the production of records designated as *archives* or *donated historical materials* administered by NARA may be served only on the Archivist of the United States, the Director of the Legal Services Staff (NSL) or his designee, the appropriate Assistant Archivist, Director of a National Archives Field Archives Branch, or Director of a Presidential Library.

[50 FR 15727, Apr. 19, 1985]

Subpart B—Research Room Rules

§ 1254.10 Registration.

Researchers must register each day they enter a research facility, furnishing the information asked for on the registration form and may be asked to provide additional personal identification.

[49 FR 33254, Aug. 22, 1984. Redesignated at 50 FR 15723, Apr. 19, 1985]

§ 1254.12 Researcher's responsibility for records.

(a) The research room attendant may limit the quantity of records delivered to a researcher at one time. If requested, a researcher must sign for the records received. The researcher is responsible for all records delivered to him/her until he/she returns them. When the researcher is finished using the records, the records should be returned to the research room attendant. The reference service slip that accompanies records to the research room must not be removed. If requested, the researcher must return records as much as 10 minutes before closing time. Before leaving a research room, even for a short time, a researcher must notify the research room attendant and place all records in their proper containers.

(b) Most microfilm is available on a self-service basis. Research room attendants can assist researchers in identifying which roll(s) of film contains the information of interest, but the researcher is responsible for locating the roll(s). Unless otherwise directed, the researcher is limited to one roll at a time. After using each roll, the researcher must place the roll on top of the cabinet from which it was removed, unless instructed otherwise.

[49 FR 33254, Aug. 22, 1984. Redesignated at 50 FR 15723, Apr. 19, 1985]

§ 1254.14 Restrictions on using microfilm readers.

If many researchers need to use the microfilm readers, individual use may be limited to 2 hours per day. Other procedures to ensure fair use of the readers may also be instituted by the facility (also called the director). The procedures can be enforced on orders from the director.

[49 FR 33254, Aug. 22, 1984. Redesignated at 50 FR 15723, Apr. 19, 1985]

§ 1254.16 Prevention of damage to records.

Researchers must exercise all possible care to prevent damage to records, and may not use them at a desk where there is a container of liquid or where a fountain pen is being used. Records must not be leaned on, written on, folded anew, traced, or handled in any way likely to cause damage. Records will be fastened with paper clips or rubber bands only if they cannot be otherwise identified for reproduction. Microfilm must be carefully removed from and returned to the proper microfilm boxes. Care must be taken loading and unloading microfilm from microfilm readers. Damaged microfilm must be reported to the research room attendant as soon as it is discovered. Exceptionally valuable or fragile records may be used only under the conditions specified by the research room attendant.

[49 FR 33254, Aug. 22, 1984. Redesignated at 50 FR 15723, Apr. 19, 1985]

§ 1254.18 Removal or mutilation of records.

Researchers may not remove records from a research room. Removing or mutilating records is forbidden by law and is punishable by fine or imprisonment or both (18 U.S.C. 2071). Researchers must check personal belongings, including briefcases, folders, coats, newspapers, or containers of any kind before entering a research room. Upon leaving, researchers must present for examination any article that could contain records. To ensure that records are not unlawfully removed or mutilated, the director may issue and post at the entrance to the research room instructions supplementing the rules in subpart B.

[49 FR 33254, Aug. 22, 1984. Redesignated at 50 FR 15723, Apr. 19, 1985]

§ 1254.20 Conduct.

(a) *Regulations.* Researchers are subject to the provisions of 41 CFR subpart 101-20.3, Conduct on Federal Property, and to all rules and regulations issued and posted or distributed by a facility director supplementing subpart B. Eating and drinking in a research room are prohibited. Smoking is prohibited except in designated smoking areas. Loud talking and other activities likely to disturb other researchers are also prohibited. Persons desiring to use typewriters, sound recording devices, or similar equipment shall work in areas designated by the research room attendant.

(b) *Revocation of a researcher identification card.* If researchers who receive researcher identification cards refuse to comply with the rules and regulations of a NARA facility, or by their actions demonstrate that they present a danger to the records or a danger or annoyance to other researchers or employees, they may have their identification cards revoked by the director. A researcher whose card is revoked is denied research privileges at all NARA facilities and must receive a written notice of the reasons for the revocation within 3 workdays. A researcher whose identification card is revoked has 30 calendar days after the revocation to appeal in writing to the Archivist of the United States, National Archives (N), Washington, DC 20408, for reinstatement of research privileges. On receiving an appeal, the Archivist of the United States has 30 days to decide whether or not to reinstate the research privileges. If the revocation is upheld or if no appeal is made, the researcher may not apply for another identification card for 6 months from the date of the revocation, and all NARA facilities will be so notified. At the end of 6 months, a researcher whose identification card was revoked may reapply for a new card. Upon application, a new identification card is issued for a probationary period of 2 months. However, if the probationary reinstatement of a researcher poses a serious threat to the safety of persons or property, the director may deny probationary reinstatement and will so advise the applicant in writing within 3 workdays of receiving the application. At the end of the probationary period the researcher may apply for a new identification card valid for 2 years. If the researcher's conduct in NARA facilities during the probationary period is proper, a regular 2-year identification card is issued. If the researcher's conduct during the probationary period is found unsatisfactory or if the director denies reinstatement, research privileges will again be denied for 6 months. A second and any later revocation of research privileges may be appealed to the Archivist of the United States under the procedures in this section.

[49 FR 33254, Aug. 22, 1984. Redesignated at 50 FR 15723, Apr. 19, 1985, and amended at 51 FR 17187, May 9, 1986]

§ 1254.22 Keeping records in order.

A researcher must keep unbound records in the order in which they are delivered to him/her. Records that appear to be in disorder must not be rearranged by the researcher, but should be referred to the research room attendant. Researchers are not allowed to remove records from more than one container at a time. Researchers should bring to the attention of the research room attendant microfilm put in the wrong box or file cabinet.

[49 FR 33254, Aug. 22, 1984. Redesignated at 50 FR 15723, Apr. 19, 1985]

§ 1254.24 Locker use policy.

(a) The National Archives and Records Administration (NARA) prohibits researchers from carrying boxes, briefcases, satchels, valises, purses, or other large containers into the research rooms or authorized stack areas. To accommodate researchers who have these items, lockers or other storage facilities are conveniently located near research rooms. These lockers or other storage facilities are available on a first-come-first-served basis.

(b) Researchers' personal belongings must be removed each night from the lockers or other storage facilities provided to hold them unless special permission is obtained in advance from designated research room staff. If personal belongings are not removed from the facilities by the researcher, they will be removed by NARA personnel. Directions for reclaiming confiscated items will be posted near the lockers or other storage facilities.

(c) The National Archives and Records Administration is not responsible for the loss or theft of articles stored in the lockers.

[45 FR 8603, Feb. 8, 1980. Redesignated at 50 FR 15723, Apr. 19, 1985]

§ 1254.26 Additional rules for use of certain research rooms in the National Archives and the Washington National Records Center buildings.

(a) The following procedures shall apply to all research rooms in the National Archives and the Washington National Records Center buildings, except the Microfilm Research Room and the Motion Pictures Research Room in the National Archives Building. These procedures are in addition to the procedures specified elsewhere in this part.

(b) All researchers bringing personal typewriters, tape recorders, cameras, personal computers, and other equipment, into the National Archives Building shall complete the Equipment Log at the guard's desk in the lobby. The log will evidence personal ownership and will be checked by the guard when such equipment is removed from the building.

(c) Researchers shall present a valid researcher identification card to the guard or research room attendant on entering the room. All researchers are required to sign each day the Daily Registration Book at the entrance to the research room. Researchers will also record the time they leave the research room at the end of the visit for that day. Researchers are not required to sign in or out when leaving the area temporarily.

(d) Researchers may not bring into the research rooms overcoats, raincoats, hats, or similar apparel; personal copying equipment including personal paper-to-paper copiers; briefcases, suitcases, daypacks, purses, or similar containers of personal property; notebooks, notepaper, notecards, folders or other containers for papers. These items may be stored at no cost in lockers available in the hallway adjacent to the various research rooms. The following exceptions may be granted:

(1) Hand-held wallets and coin purses for the carrying of currency, coins, credit cards, keys, drivers licenses and other identification cards may be brought into research rooms, but are subject to inspection when the researcher enters or leaves the room. The guard or research room attendant shall judge whether the wallet or purse may be considered small for purposes of this section;

(2) Notes, references, lists of records to be consulted, and other materials may be admitted if the chief of the branch administering the research room or the senior archivist on duty in the research room determines they are essential to a researcher's work requirements. Materials will be presented to the research room attendant when the researcher enters the research room. Materials approved for admission will be stamped to indicate that they are the personal property of the researcher;

(3) Typewriters, personal computers, tape recorders, and hand-held cameras may be admitted by the research room attendant provided that they are inspected, approved, and tagged prior to

admittance. The chief of the branch administering the research room or the senior archivist on duty in the research room will review the determination made by the research room attendant if requested to do so by the researcher; and

(4) Notepaper and notecards provided by the National Archives and electrostatic copies made on copying machines in NARA research rooms which are marked with the statement "Reproduced at the National Archives" may be brought back into the research room on subsequent visits but must be presented on entry to the research room attendant for inspection.

(e) NARA will furnish, without charge, to researchers specially marked lined and unlined notepaper and notecards, for use in the research rooms. Unused notepaper and notecards should be returned to the research room attendant at the end of the day.

(f) The personal property of all researchers, including notes, electrostatic copies, typewriter cases, tape recorders, cameras, personal computers, and other property, will be inspected before removal from the research room. Guards and research room attendants may request that a member of the research room staff examine such personal items prior to their removal from the research room.

[51 FR 17187, May 9, 1986]

§ 1254.27 Additional rules for use of certain research rooms in National Archives field branches and Presidential libraries.

(a) When directed by the appropriate director, the following procedures shall be observed in Federal Records Center, National Archives field branch and Presidential library archival research rooms where original documents are used. These procedures are in addition to the procedures specified elsewhere in this part.

(b) Researchers shall present a valid researcher identification card to the guard or research room attendant on entering the room. All researchers are required to sign each day the Daily Registration Book at the entrance to the research room. Researchers will also record the time they leave the research room at the end of the visit for that day. Researchers are not required to sign in or out when leaving the area temporarily.

(c) Researchers may not bring into the research room overcoats, raincoats, hats, and similar apparel, and briefcases, suitcases, daypacks, purses, or similar containers of personal property. In facilities where NARA provides notepaper and notecards, researchers also may not bring into the research room notebooks, notepaper, notecards, folders or other containers for papers. In facilities where NARA provides a self-service copier, researchers may not bring into the research room personal copying equipment including personal paper-to-paper copiers. These items may be stored at no cost in lockers or other storage facilities in the NARA facility. The following exceptions may be granted:

(1) Hand-held wallets and coin purses for carrying currency, coins, credit cards, keys, drivers licenses and other identification cards may be brought into research rooms, but are subject to inspection when the researcher enters or leaves the room. The guard or research room attendant shall judge whether the wallet or purse may be considered small for purposes of this section;

(2) Notes, references, lists of records to be consulted, and other materials may be admitted if the chief of the branch administering the research room or the senior attendant on duty in the research room determines they are essential to a researcher's work requirements. Materials will be presented to the attendant when the researcher enters the research room. If the materials are approved for admission, they may be stamped to indicate that they are the researcher's property;

(3) Typewriters, personal computers, tape recorders, and hand-held cameras may be admitted by the guard or research room attendant provided that they are inspected, approved, and tagged prior to admittance. The chief of the branch administering the research room or the senior attendant on duty in the research room will review the determination made by the guard or research room attendant if

requested to do so by the researcher. In facilities where personal paper-to-paper copiers are permitted, the researcher must obtain prior written approval from the facility director to bring in the copier. The request to bring a personal copier should state the space and power consumption requirements and the intended period of use; and

(4) Notepaper and notecards provided by the National Archives and electrostatic copies made on copying machines in NARA research rooms which are marked with the statement "Reproduced at the National Archives" may be brought back into the research room on subsequent visits but must be presented on entry to the guard or research room attendant for inspection.

(d) NARA may furnish specially marked lined and unlined notepaper and notecards, without charge, to researchers for use in the research rooms. Unused notepaper and notecards should be returned to the research room attendant at the end of the day.

(e) The personal property of all researchers, including notes, electrostatic copies, typewriter cases, tape recorders, cameras, personal computers, and other personal property, will be inspected before removal from the research room. Guards and research room attendants may request that a member of the research room staff examine such personal items prior to their removal from the research room.

(f) Researchers may use NARA self-service copiers or authorized personal paper-to-paper copiers to copy documents, in accordance with NARA document handling instructions and after review of the documents by the research room attendant to determine their suitability for copying. The chief of the branch administering the research room or the senior archivist on duty in the research room will review the determination of suitability, if requested by the researcher. The following types of documents are not suitable for copying on a self-service or personal copier:

(1) Bound archival volumes;

(2) Records fastened together by staples, clips, acco fasteners, rivets, or similar fasteners, where folding or bending the record may cause damage;

(3) Records larger than 11 inches by 14 inches;

(4) Records with uncancelled security classification markings;

(5) Records with legal restrictions on copying; and

(6) Records in poor physical condition in the judgment of the research room attendant.

[51 FR 31617, Sept. 4, 1986]

Subpart C—Access to Unclassified Records and Donated Historical Materials

§ 1254.30 Archives.

The use of archives is subject to the restrictions prescribed by statute or Executive order or by the restrictions specified in writing in accordance with 44 U.S.C. 2108 by the agency from which the records were transferred. NARA will make available any reasonably segregable portion of a record after the restricted portion has been deleted. The restrictions are published in the "Guide to the National Archives of the United States," and supplemented by restriction statements approved by the Archivist of the United States and set forth in part 1256 of this chapter. The Guide is available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. The Guide may also be consulted at the NARA research facilities listed in part 1253 of this chapter.

[54 FR 32069, Aug. 4, 1989]

§ 1254.32 FRC records.

Requests for access to records on deposit in Federal records centers shall be addressed directly to the appropriate agency or to the FRC director at the address shown in part 1253. The use of FRC records is subject to access rules prescribed by the agency from which the records were transferred. When the agency's rules permit, NARA makes FRC records available to requesters. When access is precluded by these rules and restrictions, the FRC director will refer to the responsible agency the requests and any appeals for access, including those made under the Freedom of Information Act.

[40 FR 7925, Feb. 24, 1975. Redesignated at 50 FR 15723, Apr. 19, 1985]

§ 1254.34 Records of defunct agencies.

Access to archives and FRC records received from agencies which have ceased to exist without a successor in function are handled in accordance with §§ 1254.30 and 1254.50.

[44 FR 18496, Mar. 28, 1979. Redesignated at 50 FR 15723, Apr. 19, 1985]

§ 1254.36 Donated historical materials.

The public use of donated historical materials is subject to restrictions on their use and availability as stated in writing by the donors or depositors of such materials and other restrictions imposed by statute. (Researchers are encouraged to confer with directors on any question of literary property right.) In addition, use is subject to all conditions specified by the Archivist of the United States for purposes of archival preservation.

[40 FR 7926, Feb. 24, 1975. Redesignated and amended at 50 FR 15723, 15726, Apr. 19, 1985]

§ 1254.38 Freedom of Information Act requests.

(a) *Applicability.* This section applies to Freedom of Information Act requests for unclassified and classified archives. This section does not apply to requests for FRC records or donated historical materials.

(b) *Definitions.*

Potentially confidential commercial information means records submitted to any agency by a submitter that may contain material exempt from release under 5 U.S.C. 552(b)(4) because disclosure could reasonably be expected to cause a submitter substantial competitive harm.

Submitter means any person or entity providing potentially confidential commercial information to an agency. The term *submitter* includes, but is not limited to, corporations, state governments, and foreign governments.

(c) *Requirements.* Requests for access to archives under the FOIA shall reasonably describe the records requested, shall be made in writing to the director of the appropriate NARA depository listed in part 1253 of this chapter or to the Assistant Archivist for the National Archives, and shall clearly indicate that the request is being made under the Act.

(d) *Processing time.* NARA shall inform requesters of the availability of records within 10 workdays after receiving a request, except when precluded from doing so by conditions as described in 5 U.S.C. 552a(6)(B), or by the need to consult with a submitter, as set forth in § 1254.39.

(e) *Denial of access.* Denials under the FOIA of access to archives are made by the appropriate director of a Presidential library or the Assistant Archivist for the National Archives, who, within 10 workdays, shall notify the requester of the reasons for denial and of the procedures for appeal.

(f) *Appeals.* (1) A requester whose request is denied in whole or in part may appeal that decision within NARA. The requester should direct a written appeal to the Deputy Archivist of the United States (ND), Washington, DC 20408.

(2) The Deputy Archivist must receive an appeal no later than 35 calendar days after the date of the NARA letter of denial to be considered timely.

(3) The appeal letter shall include the words "Freedom of Information Act Appeal" on both the letter and the envelope, and the requester shall enclose with the appeal letter a copy of the initial request and the denial.

(4) In the appeal letter the requester shall briefly state the reasons why NARA should release the records.

(5) The Deputy Archivist shall consult with the agency specifying the restriction, when appropriate, and make a determination within 20 workdays after the date of receipt by the Deputy Archivist of the appeal. If an extension is required, the Deputy Archivist shall notify the requester within 20 workdays from receipt of the request. Time extensions shall not exceed 10 workdays in the aggregate: either solely in the initial stage or solely in the appellate stage, or divided between them.

(6) If the determination is adverse in whole or in part, the Deputy Archivist shall notify the requester of the right to judicial review.

(7) Denials and appeals of denials of access to information under the FOIA exemption 552(b)(1), national security information, are processed in accordance with the provisions of § 1254.40.

[54 FR 32069, Aug. 4, 1989]

§ 1254.39 Requests for commercial information.

(a) *Notice of receipt of request.* (1) Submitters of potentially confidential commercial information shall be given written notice and an opportunity to object to release when a request is received for information the submitter designated in accordance with the recipient agency's regulations as commercial confidential, and the request is received less than 10 years after submission of the information.

(2) When the request is for information from a single or small number of submitters, the notice shall be sent to the submitter's last known address.

(3) When the request is for information from a large number of submitters, notice shall be provided by publication of a notice in the FEDERAL REGISTER.

(4) The notice shall either describe the potentially commercially confidential information requested (if the notice is published in the FEDERAL REGISTER), or provide copies of the records containing the information.

(5) NARA shall inform the requester that:

(i) Notice of receipt of a request has been provided to the submitter;

(ii) The response to the request may be delayed beyond the limitations specified in 5 U.S.C. 552(a)(6) (A) and (B) to allow for time to provide notice to the submitter, and to consider any response;

(iii) The delay may be considered as a denial of access to records and that the requester may seek judicial review. However, the requester shall be invited to agree to a voluntary extension of time so that NARA may consider any claims of commercial confidentiality provided by the submitter.

(b) *Opportunity to object to disclosure.* (1) Through the notice described in paragraph (a)(1) of this section, NARA shall afford a submitter a reasonable period of time within which to provide NARA with a detailed statement of any objections to disclosure. A reasonable extension of the time limit for response may be granted when appropriate.

(2) The statement shall specify which information is claimed to be of a confidential commercial nature, and shall specify all grounds for withholding any of the information under the exemptions of the FOIA. If exemption (b)(4) of the FOIA is cited, the statement shall explain how the release of the information can be reasonably expected to cause substantial competitive harm to the submitter.

(3) The statement shall contain a certification that the information has not been published or officially released to the public.

(4) The statement provided pursuant to this subsection may itself be subject to disclosure under the FOIA under § 1250.75.

(c) *Notice of intent to disclose.* NARA shall carefully consider any good faith designations of commercial confidentiality made when the information was initially submitted to an agency, and any timely objections submitted in response to the NARA notice of receipt of a request to release. Except as provided for in paragraph (e) of this section, when NARA determines to disclose, whether in response to a request to release or as the result of an appeal of a denial of access, notice shall be sent to the submitter that:

(1) States why the initial designation or the objections were not sustained;

(2) Describes or encloses a copy of the information proposed for disclosed; and

(3) Specifies a date on which it is proposed to release the information unless barred by court order. The requester shall be simultaneously informed of the disclosure date.

(d) *Notice of law suit.* NARA will promptly inform the requester and submitter of any law suit filed by the other concerning possible disclosure.

(e) *Exception to notice requirements.* The notice requirements of this section do not apply when:

(1) NARA determines that the information should not be disclosed in accordance with one or more FOIA exemptions;

(2) The information has been published or officially made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or,

(4) More than 10 years have passed since the date of submission, regardless of any designation as commercially confidential made by the submitter in accordance with the recipient agency's regulations, and NARA has no substantitial reason to believe that disclosure would result in competitive harm.

(5) The submitter failed to respond to a notice of receipt of request, in which case this initial notice shall serve as the notice of intent to disclose.

[54 FR 32070, Aug. 4, 1989]

Subpart D—Access to National Security Information

§ 1254.40 Access to national security information.

Declassification of and public access to national security information and material, hereinafter referred to as "classified information" or collectively termed "information," is governed by Executive Order 12356 of April 2, 1982 (47 FR 14874, April 6, 1982), the implementing Information Security Oversight Office Directive Number 1 of June 22, 1982 (47 FR 27836, June 25, 1982), and the Freedom of Information Act (5 U.S.C. 552). Documents declassified in accordance with this regulation may be withheld from release under the provisions of 5 U.S.C. 552(b) for accessioned agency records or § 1254.36 for donated historical materials.

[49 FR 1349, Jan. 11, 1984. Redesignated at 50 FR 15723, Apr. 19, 1985]

§ 1254.42 Declassification responsibility.

(a) *Classified U.S. Government originated information less than 30 years old.* Declassification of U.S. Government originated information less than 30 years old is the responsibility of the agency that originated the information.

(b) *Foreign government information provided to the United States in confidence and less than 30 years old.* Declassification of foreign government information (provided to the U.S. in confidence) less than 30 years old, is the responsibility of the agency that initially received or classified the foreign government information in consultation with concerned agencies. NARA may make a declassification determination on foreign government information less than 30 years old only when the responsible agency has specifically authorized this action.

(c) *Classified U.S. Government originated information and foreign government information provided in confidence more than 30 years old.* Systematic reviews of U.S. Government originated information and foreign government information (provided to the U.S. in confidence) more than 30 years old (except for intelligence file series described in paragraph (d) of this section) accessioned into the National Archives or donated to the Government are the responsibility of NARA. NARA shall conduct systematic declassification reviews in accordance with guidelines provided by the head of the originating agency or, with respect to foreign government information, in accordance with guidelines provided by the head of the agency having declassification jurisdiction over the information. If no guidelines for review of foreign government information have been provided by the agency heads, the Director of the Information Security Oversight Office, after coordinating with the agencies having declassification authority over the information, shall issue general guidelines for systematic declassification reviews. With respect to the systematic reviews of Presidential papers or records, guidelines shall be developed by the Archivist of the United States and approved by the National Security Council.

(d) *Classified U.S. Government originated information concerning intelligence and cryptology.* Systematic reviews of file series of accessioned records and presidential papers or records concerning intelligence activities (including special activities), or intelligence sources or methods, and cryptology created after 1945, shall be conducted as the records become 50 years old. NARA shall conduct systematic declassification reviews in accordance with guidlines provided by the Director of the Central Intelligence Agency concerning information on intelligence activities and intelligence sources and methods, and by the Secretary of Defense concerning cryptologic information.

(e) *White House information.* Declassification of information from a previous administration which was originated by the President; by the White House staff; by committees, commission, or boards appointed by the President; or by others specifically providing advice and counsel to a President or acting on behalf of the President (hereinafter referred to as "White House information") is the responsibility of the Archivist of the United States. Declassification determinations will be made after consultation with agencies having primary subject matter interest and will be consistent with the provisions of applicable laws or lawful agreements.

(f) *Information orginated by a defunct agency.* NARA is responsible for declassification of all information in the custody of NARA originated by an agency that has ceased to exist and whose functions have not been transferred to another agency and of all foreign government information originally received or classified by such an agency. NARA shall make declassification determinations after consultation with all agencies having primary subject matter interest.

[49 FR 1349, Jan. 11, 1984. Redesignated at 50 FR 15723, Apr. 19, 1985 and 51 FR 22076, June 18, 1986]

§ 1254.44 Freedom of Information Act requests.

(a) *Requests for access to national security information under the Freedom of Information Act.* Requests for access to national security information under the Freedom of Information Act are processed in accordance with the provisions of § 1254.38. Time limits for responses to Freedom of Information Act requests for national security information are those provided in the act rather than the longer time limits provided for responses to mandatory review requests specified by Executive Order 12356.

(b) *Agency action.* Upon receipt of a request forwarded by NARA for a determination regarding declassification, the agency with declassification responsibility shall:

(1) Advise whether the information should be declassified in whole or in part or should continue to be exempt from declassification;

(2) Provide a brief statement of the reason any requested information should not be declassified; and

(3) Return all reproductions referred for determination, including a copy of each document which should be released only in part, marked to indicate the portions which remain classified.

(c) *Denials and Appeals.* Denials under the Freedom of Information Act of access to national security information accessioned into the National Archives are made by designated officials of the originating or responsible agency. NARA notifies the requestor of the agency's determination. Appeals of denials of access to national security information must be made in writing to the appropriate authority in the agency having declassification responsibility for the denied information as indicated in § 1254.42. The agency appellate authority shall make a determination in accordance with 5 U.S.C. 552(b). The agency appellate authority shall notify NARA and the requestor in writing of the final denials. The agency will also furnish to NARA a copy of each document released only in part, marked to indicate the portions which remain classified.

[49 FR 1349, Jan. 11, 1984. Redesignated at 50 FR 15723, Apr. 19, 1985; further redesignated and amended at 51 FR 22076, June 18, 1986; 54 FR 32070, Aug. 4, 1989]

§ 1254.46 Public requests for mandatory review of classified information under Executive Order 12356.

United States citizens or permanent resident aliens, Federal agencies, or State or local governments wishing to request mandatory review of classified information that has been accessioned into the National Archives or donated to the Government may do so by describing the document or material containing the information with sufficient specificity to enable NARA to locate it with a reasonable amount of effort. When practicable, a request shall include the name of the originator and recipient of the information, as well as its date, subject, and file designation. If the information sought cannot be identified from the description provided or if the information sought is so voluminous that processing it would interfere with NARA's capacity to serve all requestors on an equitable basis, NARA shall notify the requestor that, unless additional information is provided or the scope of the request is narrowed, no further action will be taken. NARA shall review for declassification and release the requested information or those declassified portions of the request that constitute a coherent segment unless withholding is otherwise warranted under applicable law. Requests for mandatory review should be addressed to the appropriate NARA depository listed in Part 1253.

[49 FR 1350, Jan. 11, 1984. Redesignated at 50 FR 15723, Apr. 19, 1985]

§ 1254.48 Access by historical researchers and former Presidential appointees.

(a) Access to classified information may be granted to U.S. citizens who are engaged in historical research projects or who previously occupied policy-making positions to which they were appointed by the President. Persons desiring permission to examine material under this special historical researcher/Presidential appointees access program should contact NARA at least 4 months before they desire access to the materials to permit time for the responsible agencies to process the requests for access. NARA shall inform requestors of the agencies to which they will have to apply for permission to examine classified information and shall provide requestors with the information and forms to apply for permission from the Archivist of the United States to examine classified information originated by the White House or classified information in the custody of the National Archives which was originated by a defunct agency.

(b) Requestors may examine records under this program only after the originating or responsible agency:

(1) Determines in writing that access is consistent with the interest of national security;

(2) Takes appropriate steps to protect classified information from unauthorized disclosure or compromise, and ensures that the information is safeguarded in a manner consistent with Executive Order 12356; and

(3) Limits the access granted to former presidential appointees to items that the person originated, reviewed, signed, or received while serving as a presidential appointee.

(c) To grant against the possibility of unauthorized access to restricted records, a director may issue instructions supplementing the research room rules provided in subpart B.

[49 FR 1352, Jan. 11, 1984. Redesignated at 50 FR 15723, Apr. 19, 1985 and 51 FR 22076, June 18, 1986]

§ 1254.50 Fees.

NARA will charge requestors for copies of declassified according to the fees listed in § 1258.12 of this chapter.

[49 FR 1352, Jan. 11, 1984. Redesignated at 50 FR 15723, Apr. 19, 1985 and 51 FR 22076, June 18, 1986]

Subpart E—Information, Reproduction, and Authentication Services

§ 1254.70 NARA copying services.

(a) The copying of records will be done by personnel of the National Archives and Records Administration with equipment belonging to NARA. NARA reserves the right to make a duplicate, at NARA expense, of any material copied. Such duplicates may be used by NARA to make additional copies for others.

(b) In order to preserve the original records, records which are available on microfilm will not be copied by other means as long as a legible copy (electrostatic, photographic, or microfilm) can be made from the microfilm.

[52 FR 20080, May 29, 1987]

§ 1254.71 Use of the self-service card-operated copiers in the National Archives Building and the Washington National Records Center.

(a) Researchers who wish to make copies of records in the National Archives Building or the Washington National Records Center may use the self-service card-operated copiers located in designated research areas. To make use of these copiers, researchers should follow the procedures outlined in paragraphs (b) through (f) of this section.

(b) Use of the self-service card-operated copier is by reservation. Researchers should inform a research room attendant of their desire to use the copier and should identify the boxes containing the documents to be copied. Individual documents to be copied should be tabbed in accordance with the procedures governing the tabbing of documents and returned to their container.

(c) The attendant will examine the records to determine whether they can be copied on the self-service copier. The chief of the branch administering the research room or the senior archivist on duty in the research room will review the determination of suitability, if requested to do so by the researcher. If the records are suitable for copying on the self-service copier, the attendant will ensure that the containers are brought to the copier location and will inform researchers when they will be available there. The following types of records may not be copied on the self-service copier:

(1) Bound archival volumes;

(2) Records fastened together by staples, clips, acco fasteners, rivets, or similar fasteners, where folding or bending the records may cause damage;

(3) Records larger than 11 inches by 14 inches;

(4) Records with uncancelled security classification markings;

(5) Records with legal restrictions on copying; and

(6) Records in poor physical condition, in the judgement of the research room attendant.

(d) The self-service copiers located in the designated research area on the second floor of the National Archives Building may be used between 9 a.m. and 12 noon and between 1 p.m. and 5 p.m., Monday through Friday, except Federal holidays. The self-service copier located in Room 400 of the National Archives Building may be used between 8:45 a.m. and 10:00 p.m., Monday to Friday, and between 8:45 a.m. and 5:15 p.m. Saturday. The self-service copier located in the designated research area at the Washington National Records Center may be used between the hours of 8:00 a.m. and 4:15 p.m., Monday to Friday, except Federal holidays. If NARA further expands the use of the debitcard system to additional self-service copiers, the hours of use will be posted near the equipment. The continuous use by one researcher of a high-volume self-service copier may be limited to one hour if other researchers wish to use the machine.

(e) Researchers may use cash to purchase a debitcard from a vending machine during the hours that the self-service copier is in operation. Additionally, debitcards may be purchased with cash, check, money order, or funds from an active deposit account from the Cashier's Office located in Room G-1 of the National Archives Building, between the hours of 8:45 a.m. and 5 p.m., Monday through Friday, except Federal holidays. When a new debitcard is issued by a vending machine or the Cashier's Office, the value of the card will be reduced by the applicable deposit which will be refunded to the purchaser when the card is returned to the Cashier's Office in Room G-1. The debitcard will, when inserted into the copier, enable the user to make copies, for the appropriate fee, up to the value on the debitcard. Researchers may add value to the debitcard by using the vending machine. The fee for self-service copies is found in § 1258.12 of this chapter.

(f) To obtain a refund of any unused amount on a debitcard and the card deposit, a researcher must bring the debitcard to the Cashier's Office in the National Archives Building. Cash refunds for debitcards are currently limited to $5.00 or less. Refunds due for more than $5.00 are currently paid by U.S. Treasury check in approximately 6-8 weeks. NARA may increase the maximum cash refund amount upon waiver by the U.S. Department of the Treasury of applicable regulation. Refunds due on debitcards obtained using funds from a deposit account will be made by crediting the refund to the deposit account.

[51 FR 17187, May 9, 1986, as amended at 53 FR 1349, Jan. 19, 1988]

§ 1254.72 Information about records.

Upon request, overall information pertaining to holdings or about specific records will be furnished, provided that the time required to furnish the information is not excessive, and provided that the information is not restricted (see subpart C and subpart D). When so specified by a director, requests shall be made on prescribed forms.

[40 FR 7926, Feb. 24, 1975. Redesignated and amended at 50 FR 15723, 15726, Apr. 19, 1985]

§ 1254.74 Information from records.

Normally, information contained in the records will be furnished in the form of photocopies of the records, subject to the provisions of § 1254.70. The National Archives and Records Administration will certify facts and make administrative determinations on the basis of archives, or of FRC records when appropriate officials of other agencies have authorized NARA to do so. Such certifications and determinations shall be authenticated by the seal of NARA, the National Archives of the United States, or the transferring agency, as appropriate.

[34 FR 19979, Dec. 20, 1969. Redesignated and amended at 50 FR 15723, 15726, Apr. 19, 1985]

§ 1254.76 Authentication of copies.

The responsible director, or any of his superiors, and the Director of the Federal Register are authorized to authenticate and attest copies of records.

[33 FR 4885, Mar. 22, 1968. Redesignated at 50 FR 15723, Apr. 19, 1985]

Subpart F—Microfilming Archival Records

SOURCE: 52 FR 20081, May 29, 1987, unless otherwise noted.

§ 1254.90 General.

(a) This subpart establishes rules and procedures governing the use of privately owned microfilm equipment to film archival records and donated historical materials in the National Archives Building, the Pickett Street facility, the Washington National Records Center, the National Archives Field Branches, and the Presidential Libraries.

(b) Persons or organizations wishing to microfilm Federal agency records in the custody of a Federal Records Center should contact the director of the Center about procedures for obtaining permission to film those records.

(c) Federal agencies needing to microfilm archival records in support of the agency's mission must contact the Assistant Archivist for the National Archives, as soon as possible after the need is identified, for information concerning standards and procedures for microfilming archival records.

§1254.92 Requests to microfilm records.

(a) Requests to microfilm archival records or donated historical materials in the National Archives Building, the Washington National Records Center, the Pickett Street facility, or the National Archives Field Branches must be made in writing to the Assistant Archivist for the National Archives (NN), NARA, Washington DC 20408. Requests to microfilm records or donated historical materials in a Presidential Library must be made in writing to the Assistant Archivist for Presidential Libraries (NL), NARA, Washington DC 20408.

(b) Request to use privately owned microfilm equipment should be submitted six months in advance of the proposed starting date of the microfilming project. Requests submitted with less advance notice will be considered and may be approved if space is available for the cameras in the area set aside for private microfilming and if the records require minimal preparation for filming. Only one microfilming project may be included in a request. NARA will not accept additional requests from an individual or organization to microfilm records in a NARA facility while NARA is evaluating an earlier request from that individual or organization to microfilm records at that facility. NARA will establish the number of camera spaces available to a single project based upon the total number of projects approved for filming at that time.

(c) The request must include:

(1) A description of the records to be copied which includes the following elements:

(i) Agency of origin or, for donated historical materials, title of the collection,

(ii) Title of series or file segment;

(iii) Date span; and

(iv) Estimated volume in number of pages or cubic feet.

(2) The estimated amount of time (work-days) that the microfilm copying project will take; the date that the requester would like to begin the project; and the number of persons who would require training (see § 1254.100(b)).

(3) The number and a description of the equipment that will be used for copying including:

(i) The name of the manufacturer and model number; and

(ii) The type of light source to be employed (fluorescent, tungsten, or electronic flash) and if electronic flash (i.e., strobe) or fluorescent, whether the light source is filtered to omit ultraviolet radiation.

(4) A statement of the procedures which will be followed to ensure that all pages are copied, that the images on the microfilm are legible, and that the microfilm is properly processed. At a minimum, the procedures should meet the requirements specified in Part 1230 of this chapter regarding the microfilming of permanent records.

(5) The requester must agree to credit the National Archives or the particular Presidential Library having custody of the original documents. The credit must appear at the beginning of a microfilm publication and in any publicity material or descriptions of the publication.

(i) If the original documents are Federal records, the requester must agree to include on the film this statement: "The documents reproduced in this publication are among the records of the (name of agency) in the custody of the National Archives of the United States. No copyright is claimed in these official U.S. Government records."

(ii) If the original documents are donated historical materials, the requester must agree to include on the film this statement: "The documents reproduced in this publication are donated historical materials from (name of donor) in the custody of the (name of Presidential Library or National Archives). The donor has dedicated his/her literary rights to the public."

(6) If the person or organization producing the film plans to copyright the microfilm publication, the National Archives and Records Administration must be given a royalty-free worldwide license to sell the publication seven years after filming at the NARA facility is completed, or earlier if there is no commercial distributor.

[52 FR 20081, May 29, 1987; 52 FR 22415, June 11, 1987]

§ 1254.94 Criteria for granting the requests.

(a) NARA will evaluate the requests on the basis of the extent to which completion of a proposed project would further NARA's efforts to preserve and to make available to the public the historically valuable records of the Government.

(b) NARA will approve only requests to microfilm a complete body of records, such as an entire series or a major continous segment of a very large series which is reasonably divisible. Microfilming a complete body of records means that all documents within the file unit(s) to be microfilmed will be consecutively copied, from the first to the last page, not skipping any pages in between except for pages that are exact duplicates or blank pages that are not included in a pagination scheme.

(c) NARA will normally approve only requests which include assurances that the project will adhere to the specifications in Part 1230 of this chapter which concern microfilm stock standards, index placement, and microfilm processing for permanent records.

(d) NARA will approve only requests which specify that NARA will receive a first generation silver halide duplicate negative containing no splices made from the original camera negative of the microform record created in accordance with Part 1230 of this chapter.

(1) NARA may use this duplicate negative microform to make duplicate preservation and reference copies. The copies may be made available for NARA and public use in NARA facilities and programs.

(2) NARA may also sell copies of the microform seven years after filming at the NARA facility is completed, or earlier if there is no commerical distributor. NARA may choose to add its own editorial material to the microform copies which NARA distributes or sells.

(e) NARA will not approve any request that does not include all of the information required by § 1254.92.

(f) NARA will normally not approve requests to microfilm records:

(1) Which have previously been microfilmed and made available to the public;

(2) Which have been approved for microfilming by another party; or

(3) Which NARA plans to film as a NARA microfilm publication or which relate closely to other records previously microfilmed or approved for microfilming by NARA. Exceptions to this provision may be granted at the discretion of NARA.

(g) NARA will normally not approve requests to microfilm the following categories of records:

(1) Records which include documents with general or specific restrictions on access that preclude their reproduction;

(2) Records which include documents which are known to be protected by copyright;

(3) Records of high intrinsic value which may be handled only by authorized NARA personnel;

(4) Records in vulnerable physical condition;

(5) Records having a high research demand and which would have to be denied to others for an extended period of time during the microfilming process. Where possible, NARA will assist requesters in developing filming schedules that avoid the need to close records for a lengthy period of time; and

(6) Oversize records, bound volumes, and other formats that would be subject to excessive stress and possible damage from special equipment planned to be used by the requester, as well as records fastened with grommets, heavy duty staples, miscellaneous fasteners, or wafers and other adhesives that cannot be removed without tearing or breaking documents.

(h) NARA will normally not approve requests from persons or organizations who have failed to produce usable microfilm or to honor commitments made in previous requests, or who have had a previous permission to microfilm records rescinded because of their conduct.

(i) NARA will not approve requests to microfilm records in NARA facilities in which there is insufficient space available for private microfilming. NARA will not move records from a facility lacking space for private microfilming to another NARA facility for that purpose.

(j) Federal agencies microfilming records in support of the agency's mission may use the space set aside for private microfilming. Agency microfilming takes precedence over private microfilming when there is insufficient space to accommodate both at the same time.

§ 1254.96 Microfilm preparation.

(a) As part of its evluation of a request to microfilm records, NARA will determine the amount of microfilm preparation that NARA must do before the records can be microfilmed and the estimated cost of such preparation. The fees for microfilm preparation will be based on direct salary costs (including benefits) and supply costs when NARA staff performs the work. When the work is performed by a NARA contractor, the fees will be the cost to NARA. Microfilm preparation includes:

(1) Verifying or correcting the arrangement of records after withdrawn items are reviewed and refiled when appropriate;

(2) Screening the records for possible restrictions on use;

(3) Declassifying security classified records;

(4) Removing document fasteners from documents when the fasteners can be removed without damage to the documents; and

(5) Taking any document conservation actions that must be accomplished in order to film the records, such as document flattening or mending.

(b) NARA will provide the requester detailed information on the fees for microfilm preparation in the letter of approval. Payment of fees will be made in accordance with § 1258.14 of this chapter. When a body of records will require extensive microfilm preparation, a different payment schedule may be established at the discretion of NARA.

[52 FR 20081, May 29, 1987; 52 FR 22415, June 11, 1987]

§ 1254.98 Equipment standards.

(a) Equipment must be designed for the microfilming of documents in roll form or standard fiche form and be operable from a table top. Only planetary type camera equipment may be used. Automatic feed devices may not be used. Book cradles or other specialized equipment designed for use with bound volumes, oversized records, or other formats will be approved by the Office of the National Archives on a case-by-case basis.

(b) The power consumption of the equipment normally must not exceed 1.2 kilowatts. Power normally available is 115 volts, 60 hz. Requests for electricity exceeding that normally available must be made at least 90 days in advance.

(c) Equipment having clamps or other devices to exert pressure upon or to affix the record to any surface in a way that might damage the record may not be used.

(d) The equipment must not use a heat generating light source in close enough proximity to the records to result in their physicial distortion or degradation. All sources of ultraviolet light must be filtered.

[52 FR 20081, May 29, 1987; 52 FR 22415, June 11, 1987]

§ 1254.100 Microfilming procedures.

(a) Equipment used must conform to the equipment standards in § 1254.98.

(b) Records must be handled in accordance with the training and instructions provided by NARA personnel so that documents are not damaged during copying and so that their original order is maintained. Only persons who have attended NARA training will be permitted to handle the records or supervise microfilming operations. Training will be offered only in Washington, DC.

(c) Records from only one file unit may be microfilmed at a time.

(d) Records may not be left unattended on the copying equipment or elsewhere.

(e) Under normal microfilming conditions, actual copying time per sheet must not exceed 30 seconds.

(f) Any lights used with the camera must be turned off when the camera is not in actual operation.

(g) Microfilm equipment may be operated only in the presence of the research room attendant or a designated NARA employee.

(h) The equipment normally should be in use each working day that it is in a NARA facility. The director of the NARA facility (as defined in § 1252.2 of this chapter) will decide when equipment must be removed because of lack of regular use. The equipment must be promptly removed upon request of the facility director.

(i) NARA assumes no responsibility for loss or damage to microfilm equipment or supplies left unattended.

(j) NARA will inspect the microform output at scheduled intervals during the project to verify that the processed film meets the microfilm preparation and filming standards required by Part 1230 of this chapter. To enable NARA to properly inspect the film, NARA must receive the film within 5 days after it has been processed. The person or organization producing the microfilm will provide NARA with a silver halide duplicate negative of the filmed records (see § 1254.94(d)) according to the schedule shown in (k). If the processed film does not meet the standards, NARA may require that the records be refilmed.

(k) When 10,000 or fewer images are filmed, the person or organization producing the microfilm will provide NARA with a silver halide duplicate negative upon completion of the project. When the project involves more than 10,000 images, a silver halide duplicate negative of the first completed roll or segment of the project reproducing this image count will be provided to NARA for evaluation; subsequent completed segments of the project, in quantities approximating 100,000 or fewer images, will be provided to NARA within 30 days after filming unless NARA approved other arrangements.

§ 1254.102 Rescinding permission.

NARA may, at any time, rescind permission to microfilm records:

(a) If the person or organization fails to comply with the microfilming procedures in § 1254.100;

(b) If inspection of the processed microfilm reveals persistent problems with the quality of the filming or processing;

(c) If the person or organization fails to proceed with the microfilming or project as indicated in the request, or

(d) If the microfilming project is having an unanticipated adverse effect on the condition of the records or the space set aside in the NARA facility for microfilming.

PART 1256—RESTRICTIONS ON THE USE OF RECORDS

Sec.
1256.1 Scope of part.
1256.2 Restrictions on access.
1256.4 Access to records containing personal information.

Sec.

Subpart A—General Restrictions

1256.10 National security information.
1256.12 Information exempted from disclosure by statute.
1256.14 Trade secrets and commercial or financial information.
1256.16 Information which would invade the privacy of an individual.
1256.18 Information related to law enforcement investigations.

Subpart B—Specific Restrictions

1256.40 Agency-imposed restrictions.

AUTHORITY: 44 U.S.C. 2108.

EDITORIAL NOTE: Nomenclature changes to Part 1256 appear at 50 FR 15727, 15728, Apr. 19, 1985.

§ 1256.1 Scope of part.

This part contains material referred to in § 1254.30.

[40 FR 56892, Dec. 5, 1975. Redesignated and amended at 50 FR 15723, 15727, Apr. 19, 1985]

§ 1256.2 Restrictions on access.

The use of some archives and donated historical materials transferred to the National Archives of the United States, especially those of recent date, is subject to restrictions prescribed in statute or Executive order, or restrictions specified by the donor or agency from which the records were transferred and imposed by the Archivist of the United States. Restrictions on access to particular records that have been specified by the donor or transferring agency are known as "specific restrictions." Restrictions on access that may apply to more than one record group are termed "general restrictions," and apply to the kinds of information or classes of records designated, regardless of the record group to which such records have been allocated. Both specific and general restrictions have been published in the "Guide to the National Archives of the United States." (See § 1254.30.) Subparts A and B contain restrictions that have been added or revised since the publication of the latest edition of the Guide.

[40 FR 56892, Dec. 5, 1975. Redesignated at 50 FR 15723, Apr. 19, 1985]

§ 1256.4 Access to records containing personal information.

(a) *NARA policy.* Access to archival records containing information access to which would invade the privacy of an individual is restricted by § 1256.16.

(1) NARA may authorize access to such records for the purpose of statistical or quantitative research to qualified persons doing biomedical research under the conditions outlined in this section.

(2) If NARA is able to make a copy of such records with all personal identifiers masked or deleted, NARA will make such a "sanitized" copy of the record available to all researchers in accordance with Part 1254 of this chapter.

(3) NARA will not grant access to restricted census and survey records of the Bureau of the Census less than 72 years old containing data identifying individuals enumerated in population censuses in accordance with 44 U.S.C. 2108(b).

(4) NARA will not grant access contrary to a specific restriction to records which have specific restrictions on access imposed by the agency of origin in accordance with § 1256.40.

(b) *Request for access.* Researchers who wish to have access to records the use of which is restricted by § 1256.16 to conduct biomedical research must submit a written request to the Assistant Archivist for the National Archives (NN), National Archives and Records Administration, Washington, DC 20408. OMB control number 3095-0002 has been assigned to this collection of information requirement. Researchers are encouraged to consult informally NARA prior to submitting the formal request. The request must include the following information:

(1) Name and mailing address;

(2) Institutional affiliation and position, if applicable;

(3) List of published research;

(4) References from two persons who have first-hand knowledge of the requester's qualifications to perform the research;

(5) A statement of the nature of the research to be conducted and any plans for publication or presentation of the research findings;

(6) A listing of all sources of great funds supporting the research project or its publication;

(7) A statement of the methodology to be used;

(8) A statement of the administrative, technical, and physical safeguards to be employed by the researcher to prevent unauthorized use or disclosure of the records;

(9) A listing of the record groups and series titles to be used; and

(10) A statement that the researcher will abide by the conditions of access to be prescribed by NARA and that the researcher will assume responsibility for the action of all persons working with the researcher on the project.

(c) *Access Review Committee.* Requests made under paragraph (b) of this section will be reviewed by NARA's Access Review Committee, which is composed of the Deputy Archivist of the United States, the Assistant Archivist for the National Archives, and the director(s) of the NARA division(s) which has custody of the requested records. The Committee may consult other persons within and outside the Federal Government who are knowledgeable in the research field for assistance in evaluating a request.

(1) The Committee will examine the request to determine:

(i) Whether the requested information is of such a highly sensitive personal nature that disclosure should not be permitted even for biomedical statistical or quantitative research;

(ii) Whether the methodology proposed by the requester will permit the researcher to obtain the projected research results without revealing personally identifying information;

(iii) Whether the research results will be published or presented at an academic or research conference;

(iv) Whether the requester is a *bona fide* biomedical researcher who has previous experience in conducting statistical research projects and publishing articles or books on such research;

(v) Whether the safeguards proposed by the requester will adequately protect the personal information; and

(vi) Whether NARA has sufficient staff and space available to safeguard privacy interests necessary to accommodate the research project.

(2) The decision of the Committee will be made in writing to the requester within 15 workdays after receipt of a completed request. At the discretion of the Committee, the researcher may meet with the Committee to discuss the project or to discuss revising the research proposal to meet possible objections of the Committee.

(d) *Conditions of access.* Researchers who are granted access to restricted records, all others associated with the research project who will have access to personally identifiable information from the records, and the manager of any ADP facility handling the records or data elements containing personal identifiers shall agree in writing to maintain the confidentiality of the information and to adhere to the conditions of access imposed by NARA. NARA may impose some or all of the following conditions of access on any project; additional conditions may be imposed on the use of specific records or on specific projects:

(1) The records may be used only for the purpose of the statistical research and for the statistical reporting of research findings as described in the approved research project. The records may not be used for any other purpose without NARA approval;

(2) The records and copies of any data elements which permit the identification of an individual or which can be identified with an individual may not be transferred to any person or institution not directly involved with the approved research project;

(3) Reasonable administrative, technical, and physical safeguards, as approved by NARA, to prevent unauthorized use or disclosure of the records shall be established by the researcher and followed by all persons associated with the research project;

(4) When required by NARA, the records shall be consulted at the NARA facility where the records are located;

(5) Any individually identifiable information in the researcher's notes or in authorized copies of the records shall be rendered anonymous by the researcher at the earliest possible time consistent with the purpose of the research project;

(6) Persons who are identified in the records may not be contacted by or on behalf of the researcher;

(7) Prior to publication or public presentation of the data, the final research product(s) shall be provided to the Assistant Archivist for the National Archives for review. NARA's review shall be limited to ensuring that there is no possible identification of individuals in the research findings. NARA will not evaluate the validity of the research findings;

(8) All research notes containing personally identifiable information from privacy-restricted records and/or copies of such records shall, upon completion of the project, be destroyed or returned to NARA, whichever condition NARA has imposed as a condition of access. If the notes and/or copies are destroyed, the researcher shall verify in writing to the Assistant Archivist for the National Archives that the research notes and/or copies have been destroyed.

(e) *Noncompliance with conditions of access.* If NARA discovers that a researcher has violated any of the conditions of access imposed by NARA, NARA shall take steps to revoke the NARA research privileges of that person and shall consult with the NARA legal counsel to determine any other steps to be taken to prevent any further disclosure of the personal information concerned. NARA may also inform the following persons and organizations of the researcher's failure to follow the conditions of use:

(1) The institution with which the researcher is affiliated, if applicable;

(2) Persons who served as references in the application for access;

(3) Organizations which provided grant funds for the project;

(4) The sponsor of the publication or public presentation; and/or

(5) Appropriate professional organizations.

[53 FR 6821, Mar. 3, 1988]

Subpart A—General Restrictions

§ 1256.10 National security information.

(a) *Records.* Records containing information regarding national defense or foreign policy and properly classified under an Executive order.

(b) *Restrictions.* Such records may be disclosed only in accordance with the provisions of such Executive order and its implementing directive.

(c) *Imposed by.* Archivist of the United States in accordance with 5 U.S.C. 552 and 44 U.S.C. 2108.

[48 FR 6540, Feb. 14, 1983. Redesignated at 50 FR 15723, Apr. 19, 1985]

§ 1256.12 Information exempted from disclosure by statute.

(a) *Records.* Records containing information which is specifically exempted from disclosure by statute.

(b) *Restrictions.* Such records may be disclosed only in accordance with the provisions of 44 U.S.C. 2108.

(c) *Imposed by.* Archivist of the United States in accordance with 5 U.S.C. 552 and 44 U.S.C. 2108.

[48 FR 6541, Feb. 14, 1983, as amended at 48 FR 45393, Oct. 5, 1983. Redesignated at 50 FR 15723, Apr. 19, 1985]

§ 1256.14 Trade secrets and commercial or financial information.

(a) *Records.* Records not restricted by statute but which contain trade secrets and commercial or financial information submitted to the government with an expressed or implied understanding of confidentiality.

(b) *Restrictions.* Such records may be disclosed only if:

(1) The party that provided the information agrees to its release; or

(2) In the judgment of the Archivist of the United States, the passage of time is such that release of the information would not result in substantial competitive harm.

(c) *Imposed by.* Archivist of the United States in accordance with 5 U.S.C. 552 and 44 U.S.C. 2108.

[48 FR 6541, Feb. 14, 1983. Redesignated at 50 FR 15723, Apr. 19, 1985]

§ 1256.16 Information which would invade the privacy of an individual.

(a) *Records.* Records containing information about a living individual which reveal details of a highly personal nature that the individual could reasonably assert a claim to withhold from the public to avoid a clearly unwarranted invasion of privacy, including but not limited to information about the physical or mental health or the medical or psychiatric care or treatment of the individual, and that—

(1) Contain personal information not known to have been previously made public, and

(2) Relate to events less than 75 years old.

(b) *Restrictions.* Such records may be disclosed only:

(1) To those officers and employees of the agency that transferred the records to the National Archives who have a need for the record in the performance of their official duties;

(2) To those officers and employees of the agency that originated the information in the records who have a need for the records in the performance of their official duties;

(3) To researchers for the purpose of statistical or quantitative research when such researchers have provided the National Archives with adequate written assurance that the record will be used solely as a statistical research or reporting record and that no individually identifiable information will be disclosed; or

(4) To the subject individual or his duly authorized representative (the individual requesting access will be required to furnish reasonable and appropriate identification). Access will not be granted, however, to records containing the following categories of information:

(i) Investigatory material compiled for law enforcement purposes or for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, or Federal contracts if the identity of the source who furnished the information to the Government under an expressed or implied promise of confidentiality is revealed;

(ii) Evaluation material used to determine potential for promotion in the armed services if the identity of the source who furnished the information to the government under an expressed or implied promise of confidentiality is revealed; and

(iii) Security classified material.

(c) *Imposed by.* Archivist of the United States in accordance with 5 U.S.C. 552 and 44 U.S.C. 2108.

[48 FR 6541, Feb. 14, 1983. Redesignated at 50 FR 15723, Apr. 19, 1985]

§ 1256.18 Information related to law enforcement investigations.

(a) *Records.* Records compiled for law enforcement purposes.

(b) *Restrictions.* Such records may be disclosed only:

(1) If the release of the information does not interfere with enforcement proceedings, and

(2) If confidential sources and/or confidential information are not revealed, and

(3) If the release of the information would not constitute an unwarranted invasion of personal privacy, and

(4) If confidential investigation techniques are not described, and

(5) If the release of the information would not endanger the safety of law enforcement personnel, or

(6) If, in the judgment of the Archivist of the United States the passage of time is such that:

(i) The safety of persons is not endangered, and

(ii) The public interest in disclosure outweighs the continued need for confidentiality.

(c) *Imposed by.* Archivist of the United States in accordance with 5 U.S.C. 552 and 44 U.S.C. 2108.

[48 FR 6541, Feb. 14, 1983, as amended at 48 FR 45393, Oct. 5, 1983. Redesignated at 50 FR 15723, Apr. 19, 1985]

Subpart B—Specific Restrictions

§ 1256.40 Agency-imposed restrictions.

Some records in NARA legal custody are covered by restrictions imposed by the agency of origin that are in conformance with the Freedom of Information Act.

[50 FR 15727, Apr. 19, 1985]

PART 1258—FEES

Sec.
1258.1 Authority.
1258.2 Applicability.
1258.4 Exclusions.
1258.6 Color reproductions.
1258.8 Copy negatives.
1258.10 Mail orders.
1258.11 Fees for reproduction of archival records in response to FOIA requests.
1258.12 Fee schedule.
1258.14 Payment of fees.
1258.16 Effective date.

AUTHORITY: 44 U.S.C. 2116(c).

EDITORIAL NOTE: Nomenclature changes to Part 1258 appear at 50 FR 15727, 15728, Apr. 19, 1985.

§ 1258.1 Authority.

44 U.S.C. 2116(c) authorizes the charging of a fee for making or authenticating copies or reproductions of materials transferred to the Archivist's custody. Under 44 U.S.C. 2307 the Chairman, National Archives Trust Fund Board, is authorized to prepare and publish special works and collections of sources and to prepare, duplicate, edit, and release historical photographic materials and sound recordings and sell those publications and releases at a price that will cover their cost, plus 10 percent.

[40 FR 7926, Feb. 24, 1975. Redesignated and amended at 50 FR 15723, 15727, Apr. 19, 1985]

§ 1258.2 Applicability.

(a) Except as otherwise provided in this section, fees for the reproduction of NARA archival records, donated historical materials, and records filed with the Office of the Federal Register are as set forth in § 1258.12. Some reproduction services listed in § 1258.12 may not be available at all NARA facilities.

(b) The fees set forth in § 1258.12 apply to reproduction of FRC records, except when NARA and the agency that transferred the records have agreed to apply that agency's fee schedule.

(c) The following categories are excluded from the fees set forth in § 1258.12.

(1) National Archives publications, including microfilm publications. Prices of publications are available from the Publications Sales Branch (NEPS), National Archives, Washington, DC 20408.

(2) Audiovisual materials sold by the National Audiovisual Center. Prices for these materials are available from the National Audiovisual Center (NEA), Washington, DC 20409.

(3) Motion picture and sound and video recording materials among the holdings of the National Archives. Prices for reproduction of these materials are available from the Motion Picture and Sound and Video Branch, National Archives (NNSM), Washington, DC 20408.

(4) Machine-readable records. Prices for duplication are available from the Machine-readable Branch, National Archives (NNSR), Washington, DC 20408.

(5) Military service files and pension files more than 75 years old. Reproduction of a military service file (or selected documents from the file if voluminous)—$5.

(6) Passenger lists more than 75 years old—$5.

(7) Reproductions of NARA administrative records made in response to FOIA requests under Part 1250 of this chapter. Fees for such reproductions are found in § 1250.40 of this chapter.

(8) Customers may request expedited service for still and motion picture reproduction orders only. NARA will accept "rush" orders for these materials only after it determines that sufficient personnel are available to handle such orders. Rush orders are subject to a surcharge to cover the additional cost of providing expedited service.

(9) Orders requiring additional expense to meet unusual customer specifications such as the use of special techniques to make a photographic copy more legible than the original document, or unusual format or background requirement for negative microfilm. Fees for these orders are computed for each order.

(10) The fees for reproductions of archival records made in response to FOIA requests are set forth in § 1258.11.

[40 FR 7928, Feb. 24, 1975, as amended at 41 FR 45001, Oct. 14, 1976; 46 FR 37652, July 22, 1981; 49 FR 9726, Mar. 15, 1984; 49 FR 42934, Oct. 25, 1984. Redesignated and amended at 50 FR 15723, 15727, Apr. 19, 1985; further amended at 50 FR 50905, Dec. 13, 1985; 52 FR 29521, Aug. 10, 1987; 53 FR 12151, Apr. 13, 1988; 53 FR 23760, June 24, 1988]

§ 1258.4 Exclusions.

No fee is charged for reproduction or authentication in the following instances:

(a) Documents furnished to other elements of the Federal Government. However, a fee may be charged if the appropriate director determines that the service cannot be performed without reimbursement.

(b) When NARA wishes to disseminate information about its activities to the general public through press, radio, television, and newsreel representatives;

(c) When the reproduction is to furnish the donor of a document or other gift with a copy of the original;

(d) When the reproduction is for individuals or associations having official voluntary or cooperative relations with NARA in its work;

(e) When the reproduction is for a foreign, State, or local government or an international agency and furnishing it without charge is an appropriate courtesy;

(f) When furnishing the service free conforms to generally established business custom, such as furnishing personal reference data to prospective employers of former Government employees;

(g) When the reproduction of not more than one copy of the document is required to obtain from the Government financial benefits to which the requesting person may be entitled (e.g., veterans or their dependents, employees with workmen's compensation claims, or persons insured by the Government);

(h) When the reproduction of not more than one copy of the transcript of a hearing or other formal proceeding involving security requirements for Federal employment is requested by a person directly concerned in the hearing or proceeding; and

(i) When the reproduction of not more than one copy of a document is for a person who has been required to furnish a personal document (e.g., birth certificate and retention by an agency of the Government).

[40 FR 7928, Feb. 24, 1975. Redesignated at 50 FR 15723, Apr. 19, 1985, and amended at 50 FR 50905, Dec. 13, 1985]

§ 1258.6 Color reproductions.

Color reproductions are furnished to the public and the Government only on a fee basis.

[40 FR 7928, Feb. 24, 1975. Redesignated at 50 FR 15723, Apr. 19, 1985]

§ 1258.8 Copy negatives.

Requests for photographs of materials for which no copy negative is on file are handled as follows:

(a) The cost of the negative shall be charged to the customer; except in cases where NARA wishes to retain the negative for its own use.

(b) When no fee is charged the negative becomes the property of NARA. When a fee is charged the negative becomes the property of the customer.

[40 FR 7928, Feb. 24, 1975. Redesignated at 50 FR 15723, Apr. 19, 1985]

§ 1258.10 Mail orders.

(a) There is a minimum fee of $5.00 per order for reproductions which are sent by mail to the customer.

(b) Orders to addresses in the United States are sent either first class or UPS depending on the weight of the order and availability of UPS service. When a customer requests special mailing services (such as Express Mail or registered mail) and/or shipment to a foreign address, the cost of the special service and/or additional postage for foreign mail is added to the cost of the reproductions.

[49 FR 9726, Mar. 15, 1984. Redesignated at 50 FR 15723, Apr. 19, 1985, and amended at 50 FR 50905, Dec. 13, 1985]

§ 1258.11 Fees for reproduction of archival records in response to FOIA requests.

(a) *Electrostatic copies.*

(1) Paper to paper (up to 11 in. by 17 in.):

NARA makes the copy	$0.35
Customer makes the copy on a NARA self-service copier	$0.10

(2) Oversized electrostatic copies (per foot): $1.60 (plus $0.20 per foot for vellum paper)

(3) Microfilm to paper:

	Up to 11 in. by 17 in.	18 in by 24 in.
Work done by customer	$0.30	$0.80
NARA performs the work:		
First copy per roll	1.85	2.35
Next consecutive frame or duplicate	.80	1.30
Next nonconsecutive frame	.95	1.50

(b) *Other processes.* Fees for other reproduction processes not listed in § 1258.11 are computed upon request.

[53 FR 12151, Apr. 13, 1988]

§ 1258.12 Fee schedule.

(a) *Certification:* $2.00.

(b) *Still photography:*

(1) Copy negatives (Black & White):

4 in. by 5 in	$4.40
8 in. by 10 in	6.00

(2) Copy negatives (Color):

4 in. by 5 in	$10.85
8 in. by 10 in	23.30

(3) Slides:

2 in. by 2 in. (Black & White)	$2.00
2 in. by 2 in. (Color)	2.45

(4) Aerial photographic reproductions:

10 in. by 10 in. direct duplicate negative	6.95
10 in. by 10 in. contact print	5.50
14 in. by 14 in	8.70
18 in. by 18 in	9.20
20 in. by 24 in	10.20
24 in. by 30 in	13.25
40 in. by 41 in	19.55

(c) *Electrostatic copying:*

(1) Paper to paper (up to 11 in. by 17 in.):

best copy available

Reproduced from poor document.

Customer makes the copy at a NARA self-service copier	$0.10
NARA makes the copy	.35

(2) Oversized electrostatic copies (per foot): $1.60

Add per foot for vellum paper: .20

(3) Red-line copies: 1.15

(4) Microfilm to paper:

From positive—	Up to 11 in. by 17 in.	18 in by 24 in.
Work done by customer	$0.30	$0.80
NARA performs the work:		
First copy per roll	1.85	2.35
Next consecutive frame or duplicate	[illegible]	1.30
Next nonconsecutive frame	.95	1.50

(d) *Microfilm:*

	16mm Rotary	16mm Planetary	35mm Planetary	35mm Oversize
(1) Negative (per frame)	0.28	0.36	0.37	0.43
(2) Next generation (per foot)		.31	.33	
(3) Direct duplicate (per foot)		.12	.34	

(e) *Diazo microfiche duplication (per fiche):* $1.05

(f) *Technical services:*

	Regular	Overtime
Photographer (per hour)	$11.00	$16.50
Microfilm preparation (per hour)	9.50	14.25
Sound and video recordings (per hour)	11.50	17.25

(g) *Preservation of records.* In order to preserve certain records which are in poor physical condition, NARA may restrict customers to a choice of photostatic or microfilm copies instead of electrostatic copies.

(h) *Unlisted processes.* Fees for reproduction processes not listed in § 1258.12 are computed upon request.

[53 FR 12151, Apr. 13, 1988; 53 FR 16257, May 6, 1988, as amended at 53 FR 23760, June 24, 1988]

§ 1258.14 Payment of fees.

Fees may be paid in cash or by check, or by money order made payable to the National Archives Trust Fund. Remittances from outside the United States must be made by international money order payable in U.S. dollars, or check drawn on a U.S. bank. Checks for prepaid orders over $200 must be certified. Fees must be paid in advance except when the appropriate director approves a request for handling them on an account receivable basis. Purchasers with special billing requirements must state them when placing orders and must complete special forms for NARA approval ahead of time.

[46 FR 37653, July 22, 1981. Redesignated at 50 FR 15723, Apr. 19, 1985]

§ 1258.16 Effective date.

The fees in § 1258.12 are effective on May 1, 1988.

[53 FR 12151, Apr. 13, 1988]

SUBCHAPTER D—DECLASSIFICATION

PART 1260—DECLASSIFICATION OF AND PUBLIC ACCESS TO NATIONAL SECURITY INFORMATION

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Subpart F—Other Mandatory Review

1260.60 Mandatory review of classified White House information in the custody of other agencies.

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1260.72 Information originated in the White House and under the declassification jurisdiction of the Archivist.
1260.74 Appeals.

AUTHORITY: 44 U.S.C. 2104(a); Executive Order 12356 of April 2, 1982 (3 CFR 1982 Comp., p. 166).

SOURCE: 49 FR 1344, Jan. 11, 1984, unless otherwise noted. Redesignated at 50 FR 15723, Apr. 19, 1985.

EDITORIAL NOTE: Nomenclature changes to Part 1260 appear at 50 FR 15727, 15728, Apr. 19, 1985.

§ 1260.1 Scope of part.

Declassification of and public access to national security information and material (hereafter referred to as "classified information" or collectively termed "information") is governed by Executive Order 12356 of April 2, 1982 (47 FR 14874, April 6, 1982) and by the Information Security Oversight Office Directive Number 1 of June 22, 1982 (47 FR 27836, June 25, 1982). Documents declassified in accordance with this regulation may be withheld from release under the provisions of 5 U.S.C. 552(b) for accessioned agency records or § 1254.36 for donated historical materials. Procedures for public requests for mandatory review of classified information under Executive Order 12356 are found in § 1254.46 of this chapter.

[51 FR 22076, June 18, 1986]

§ 1260.4 Agency liaison.

To ensure that NARA will be able to respond promptly to mandatory review requests and appeals from denials, the head of each agency shall be requested to provide NARA with the current name, title, and address of the agency's designated mandatory review and appellate authority.

[49 FR 1344, Jan. 11, 1984. Redesignated and amended at 50 FR 15723, 15727, Apr. 19, 1985]

Subpart A—Mandatory Review of Classified U.S. Government Originated Information and Foreign Government Information Provided to the United States in Confidence

§ 1260.10 NARA action.

(a) *Information less than 30 years old.* NARA shall promptly acknowledge receipt of a request for mandatory review of classified U.S. Government originated information, and within 30 calendar days of receipt of the request, shall forward the request, with copies of the documents containing the requested information, to the agency that originated the information or to the agency that the Archivist determines has primary subject matter interest. With respect to foreign government information, the request and copies of the documents shall be forwarded to the agency which initially received or classified the information. If unable to identify that agency, NARA shall forward the request to the agency which has primary subject matter interest. NARA shall inform the requester that referrals have been made to the appropriate Government agency.

(b) *Information more than 30 years old.* NARA shall acknowledge receipt of a request for mandatory review of classified U.S. Government originated information or foreign government information which NARA may review for declassification using systematic review guidelines, and within 60 days of receipt of the request shall act upon it and notify the requester of the action taken. If additional time is necessary to make a declassification determination, NARA shall notify the requester of the time needed to process the request. Except in unusual circumstances, NARA will make a final determination within 1 year of the receipt of the request. Information which NARA may not declassify using the systematic review guidelines will be promptly forwarded, with copies of the documents containing the requested information, to the responsible agency. NARA shall inform the requester that referrals have been made to the appropriate Government agency.

[51 FR 22076, June 18, 1986]

§ 1260.12 Agency action.

Upon receipt of a request for mandatory review of classified U.S. Government originated information or foreign government information forwarded by NARA, the originating or responsible agency shall:

(a) Either make a prompt declassification determination and notify the requester accordingly, or inform the requester and NARA of the additional time needed to process the request. Except in unusual circumstances agencies shall make a final determination within 1 year.

(b) Notify NARA of any other agency to which it forwarded the request in those cases requiring the declassification determination of another agency.

(c) Forward the declassified reproductions to the requester with their determination and also notify NARA of that determination. When the request cannot be declassified in its entirety, the agency must also furnish to the requester (with a copy to NARA):

(1) A brief statement of the reasons the requested information cannot be declassified; and

(2) A statement of the right to appeal within 60 calendar days of receipt of the denial, the procedures for taking such action; and the name, title, and address of the appeal authority. The agency appellate authority shall make a determination within 30 working days following the receipt of an appeal. If additional time is required to make a determination, the agency appellate authority shall notify the requester and NARA of the additional time needed and provide the requester with the reason for the extension. The agency appellate authority shall notify NARA and the requester in writing of the final determination and of the reasons for any denial.

(d) Furnish to NARA a copy of each document released only in part, marked to indicate the portions which remain classified.

[49 FR 1344, Jan. 11, 1984. Redesignated at 50 FR 15723, Apr. 19, 1985, and amended at 51 FR 22077, June 18, 1986]

Subpart B—[Reserved]

Subpart C—Mandatory Review of Classified Information Originated by a Defunct Agency or Received by a Defunct Agency From a Foreign Government

§ 1260.30 NARA action.

NARA is responsible for declassification of all information in the custody of NARA originated by an agency which has ceased to exist and whose functions have not been transferred to another agency and of all foreign government information originally received or classified by such an agency. NARA will promptly acknowledge receipt of requests for such information, review the information using applicable systematic review guidelines, and, when necessary, consult with any agency having primary subject matter interest. NARA shall either make a prompt declassification determination and notify the requester accordingly, or inform the requester of the additional time needed to process the request. Except in unusual circumstances NARA shall make a final determination within one year. If the request is denied in whole or in part, the Assistant Archivist for the National Archives or the Assistant Archivist for Presidential Libraries will furnish the requester a brief statement of the reasons for denial and a notice of the right to appeal the determination within 60 calendar days to the Deputy Archivist of the United States (mailing address: National Archives (ND), Washington, DC 20408). Upon receipt of an appeal the Deputy Archivist shall, within 30 working days:

(a) Review the previous decision made to deny the information and, as necessary;

(b) Consult with the appellate authorities in any agency having primary subject matter interest in the information previously denied; and

(c) Notify the requester of the determination and make available to the requester any additional information that has been declassified as a result of the appeal.

§ 1260.32 Agency action.

Upon receipt of a request forwarded by NARA for consultation regarding the declassification of information originated by a defunct agency or of foreign government information originally received or classified by a defunct agency, the agency with primary subject matter interest shall:

(a) Advise the Archivist whether the information should be declassified in whole or in part or should continue to be exempt from declassification; and

(b) Return the request to NARA along with a brief statement of the reasons any requested information should not be declassified.

Subpart D—Mandatory Review of Classified White House Originated Information and Foreign Government Information Received or Classified in the White House Less Than 30 Years Old

§ 1260.40 Information subject to mandatory review.

Information originated by a President, the White House staff, by committees, commissions, or boards appointed by a President, or others specifically providing advice and counsel to a President or acting on behalf of a President (hereafter cited as White House originated information) is subject to mandatory review consistent with the provisions of applicable laws or lawful agreements that pertain to the respective Presidential papers or records. Unless precluded by such laws or agreements, White House originated information is subject to mandatory review 10 years after the close of the administration which created the materials or when the materials have been archivally processed, whichever occurs first.

[49 FR 1344, Jan. 11, 1984. Redesignated and amended at 50 FR 15723, 15728, Apr. 19, 1985]

§ 1260.42 NARA action.

(a) NARA shall promptly acknowledge receipt of a request for mandatory review of such classified White House originated information and foreign government information received or classified in the White House.

(b) NARA will review the requested information, determine which agencies have primary subject matter interest, forward to those agencies copies of material containing the requested information, and request their recommendations regarding declassification.

(c) NARA will review the recommendations returned by the agencies and make its declassification determination within one year of receipt of the request, except in unusual circumstances.

(d) When the request cannot be declassified in its entirety, NARA will furnish the requester:

(1) A brief statement of the reasons the requested information cannot be declassified;

(2) Access to those portions of documents releasable only in part that constitute a coherent segment; and

(3) A notice of the right to appeal the determination within 60 calendar days to the Deputy Archivist of the United States (mailing address: National Archives (ND), Washington, DC 20408).

§ 1260.44 NARA appellate process.

Upon receipt of an appeal, the Deputy Archivist shall within 30 working days:

(a) Review the decision made to deny the information;

(b) Consult with the appellate authorities in agencies having primary subject matter interest in the information previously denied;

(c) Notify the requester of the determination and make available to the requester any additional information which has been declassified as a result of the appeal; and

(d) Notify the requester of the right to appeal denials of access to the Director, Information Security Oversight Office (mailing address: General Services Administration (Z), Washington, DC 20405).

§ 1260.46 Agency action.

Upon receipt of a request forwarded by NARA for consultation regarding declassification of White House originated information and foreign government information received by or classified in the White House, the agency with primary subject matter interest shall:

(a) Advise the Archivist whether the information should be declassified in whole or in part or should continue to be exempt from declassification; and

(b) Provide a brief statement of the reasons any requested information should not be declassified and return the reproductions to NARA;

(c) Return all reproductions referred for consultation including a copy of each document which should be released only in part, marked to indicate the portions which should remain classified.

Subpart E—Mandatory Review of Classified White House Information More Than 30 Years Old

§ 1260.50 Mandatory review of classified White House originated information and foreign government information received by or classified in the White House more than 30 years old.

(a) NARA shall promptly acknowledge the receipt of a request for mandatory review of classified White House originated information and foreign government information received by or classified in the White House more than 30 years old, and shall act upon that request within 60 calendar days. If additional time is necessary to make a declassification determination, NARA shall notify the requester of the time needed to process the request. NARA will make a final determination within 1 year of the receipt of the request, except in unusual circumstances.

(b) NARA shall review the information using applicable systematic review guidelines and will make available to the requester information declassified using those guidelines.

(c) Information which cannot be declassified by NARA using systematic review guidelines will be promptly forwarded to the agencies with primary subject matter interest and further processed in accordance with § 1260.42 (b) through (d) and §§ 1260.44 through 1260.46.

Subpart F—Other Mandatory Review

§ 1260.60 Mandatory review of classified White House information in the custody of other agencies.

Agencies having custody of classified White House information of a previous administration shall forward requests for mandatory review of such information to the Office of the National Archives (mailing address: National Archives (NND), Washington, DC 20408) together with copies of documents containing the requested information and the agency's recommendations regarding declassification. NARA will make a declassification determination on such requests after consulting with any other agency with primary subject matter interest and will reply to the requester. If the request is denied in whole or in part, the requester may appeal within 60 calendar days of receipt of the denial to the Deputy Archivist of the United States (mailing address: National Archives (ND), Washington, DC 20408). Appeals are processed in accordance to the procedures listed in § 1260.44.

Subpart G—Requests for Reclassification of Information

§ 1260.70 Information originated by or under the declassification jurisdiction of Federal agencies.

An agency may request NARA to temporarily close, re-review, and possibly reclassify records and donated historical materials originated by the agency which were declassified in accordance with E.O. 12356 or predecessor Orders. The agency shall submit the request in writing to the Assistant Archivist for the National Archives (NN) or to the Assistant Archivist for Presidential Libraries (NL) (mailing address: National Archives (NL), Washington, DC 20408). If the urgency of the matter precludes a written request, an authorized agency official may make a preliminary request by telephone. A written request shall follow the oral request within 5 workdays. In the request the authorized agency official shall:

(a) Identify the records or donated historical materials involved as specifically as possible;

(b) Explain the reason the agency believes a re-review and possible reclassification may be necessary in the interest of national security; and

(c) Provide any information the agency may have concerning any previous public disclosure of the information in the records or donated historical materials.

§ 1260.72 Information originated in the White House and under the declassification jurisdiction of the Archivist.

Requests from agencies to re-review and possibly reclassify information originated by a President; the White House staff; committees commissions, or boards appointed by the President; or others specifically providing advice and counsel to a President or acting on behalf of a President and which has been declassified and disclosed shall be submitted in writing to the Archivist of the United States. In the request the authorized agency official shall:

(a) Specifically identify the record or donated historical material;

(b) Explain the reason the agency believes a re-review and possible reclassification may be necessary in the interest of national security; and

(c) Provide any information the agency may have concerning the public disclosure of the information in the records or donated historical material.

§ 1260.74 Appeals.

NARA may appeal to the Director, Information Security Oversight Office, any re-review or reclassification request from an agency when, in the Archivist's opinion, the facts of previous disclosure suggest that such action is unwarranted or unjustified.

SUBCHAPTER E—PRESIDENTIAL RECORDS

PART 1270—PRESIDENTIAL RECORDS

Subpart A—General Provisions

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Subpart B—Actions Taken on Behalf of Former Presidents

1270.20 Designation of person or persons to act for former President.
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Subpart C—Disposal of Presidential Records

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Subpart D—Access to Presidential Records

1270.40 Identification of restricted records.
1270.42 Denial of access to public; right to appeal.
1270.44 Exceptions to restricted access.
1270.46 Notice of intent to disclose Presidential Records.

Subpart E—Presidential Records Compiled for Law Enforcement Purposes

1270.50 Consultation with law enforcement agencies.

Authority: The Presidential Records Act of 1978, Pub. L. 95-591, 92 Stat. 2523-27, as amended by the National Archives and Records Administration Act of 1984, Pub. L. 98-497, sec. 107(b)(7), 98 Stat. 2287 (1984) (codified at 44 U.S.C. 2201-07).

Source: 53 FR 50404, Dec. 15, 1988, unless otherwise noted.

Subpart A—General Provisions

§ 1270.10 Scope of part.

These regulations implement the provisions of the Presidential Records Act of 1978, Pub. L. No. 95-591, 92 Stat. 2523-27, as amended by Pub. L. No. 98-497, sec. 107(b)(7), 98 Stat. 2287 (1984) (codified at 44 U.S.C. 2201-07), by setting forth the policies and procedures governing preservation, protection, and disposal of, and access to Presidential and Vice-Presidential records created during a term of office of the President or Vice President beginning on or after January 20, 1981. Nothing in these regulations is intended to govern procedures for assertion of, or response to, any constitutionally based privilege which may be available to an incumbent or former President.

§ 1270.12 Application.

(a) These regulations apply to all Presidential records created during a term of office of the President beginning on or after January 20, 1981.

(b) Vice-Presidential records shall be subject to the provisions of this part in the same manner as Presidential records. The Vice President's duties and responsibilities, with respect to Vice-Presidential records, shall be the same as the President's duties and responsibilities with respect to Presidential records. The Archivist's authority with respect to Vice-Presidential records shall be the same as the Archivist's authority with respect to Presidential records, except that the Archivist may, when he determines it to be in the public interest, enter into an agreement with a non-Federal archival repository for the deposit of Vice-Presidential records.

§ 1270.14 Definitions.

For the purposes of this Part—

(a) The terms "documentary material", "Presidential records", "personal records", "Archivist", and "former President" have the meanings given them by 44 U.S.C. 2201 (1)-(5), respectively.

(b) The term "agency" has the meaning given it by 5 U.S.C. 551(1) (A)-(D) and 552(f).

(c) The term "Presidential archival depository" has the meaning given it by 44 U.S.C. 2101(1).

(d) The term "Vice-Presidential records" means documentary materials, or any reasonably segregable portion thereof, created or received by the Vice President, his immediate staff, or a unit or individual of the Office of the Vice President whose function is to advise and assist the Vice President, in the course of conducting activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the Vice President. The term includes documentary materials of the kind included under the term "Presidential records."

(e) The term "filed" means the date something is received in the office of the official to whom it is addressed.

Subpart B—Actions Taken on Behalf of Former Presidents

§ 1270.20 Designation of person or persons to act for former President.

(a) A President or former President may designate some person or persons to exercise, upon death or disability of the President or former President, any or all of the discretion or authority granted to the President or former President by chapter 22 of Title 44, United States Code.

(b) When a President or former President designates a person or persons to act for him pursuant to paragraph (a) of this section, this designation shall be effective only if the Archivist has received notice of the designation before the President or former President dies or is disabled.

(c) The notice required by paragraph (b) of this section shall be in writing, and shall include the following information:

(1) Name(s) of the person or persons designated to act for the President or former President;

(2) The current addresses of the person or persons designated; and

(3) The records, identified with reasonable specificity, over which the designee(s) will exercise discretion or authority.

§ 1270.22 When Archivist may act for former President.

In those instances where a President has specified, in accordance with 44 U.S.C. 2204(a), restrictions on access to Presidential records, but has not made a designation under § 1270.20 of this subpart, the Archivist shall, upon the death or disability of a President or former President, exercise the discretion or authority granted to a President or former President by 44 U.S.C. 2204.

Subpart C—Disposal of Presidential Records

§ 1270.30 Disposal of Presidential records by incumbent President.

A President may, while in office, dispose of any Presidential records which in his opinion lack administrative, historical, informational, or evidentiary value if one of the following two sets of requirements is satisfied:

(a)(1) The President has obtained the written views of the Archivist concerning the proposed disposal; and

(2) The Archivist states in his written views to the President that he does not intend to request, with respect to the President's proposed disposal of Presidential records, the advice of the Committees on Rules and Administration and Governmental Affairs of the Senate, and the Committees on House Administration and Government Operations of the House of Representatives because he does not consider—

(i) The records proposed for disposal to be of special interest to the Congress; or

(ii) Consultation with the Congress concerning the proposed disposal to be in the public interest; or

(b)(1) The President has obtained the written views of the Archivist concerning the proposed disposal;

(2) The Archivist states in his written views either—

(i) That the records proposed for disposal may be of special interest to the Congress; or

(ii) That consultation with the Congress concerning the proposed disposal is in the public interest; and

(3) The President submits copies of the proposed disposal schedule to the Committees on Rules and Administration and Governmental Affairs of the Senate and the Committees on House Administration and Government Operations of the House of Representatives at least 60 calendar days of continuous session of Congress in advance of the proposed disposal date. For the purpose of this section, continuity of session is broken only by an adjourn-

ment of Congress *sine die*, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the days in which Congress is in continuous session.

§ 1270.32 Disposal of Presidential Records in the custody of the Archivist.

(a) The Archivist may dispose of Presidential records which he has appraised and determined to have insufficient administrative, historical, informational, or evidentiary value to warrant their continued preservation.

(b) When Presidential records are scheduled for disposal pursuant to paragraph (a) of this section, the Archivist shall publish a notice of this disposal in the FEDERAL REGISTER at least 60 days before the proposed disposal date.

(c) The notice required by paragraph (b) of this section, shall include the following:

(1) A reasonably specific description of the records scheduled for disposal; and

(2) A concise statement of the reason for disposal of the records.

(d) Publication in the FEDERAL REGISTER of the notice required by paragraph (b) of this section shall constitute a final agency action for purposes of review under chapter 7 of Title 5, United States Code (5 U.S.C. 701-06).

Subpart D—Access to Presidential Records

§ 1270.40 Identification of restricted records.

(a) If a President, prior to the conclusion of his term of office or last consecutive term of office, as the case may be, specifies durations, not to exceed 12 years, for which access to certain information contained in Presidential records shall be restricted, in accordance with 44 U.S.C. 2204, the Archivist or his designee shall identify the Presidential records affected, or any reasonably segregable portion thereof, in consultation with that President or his designated representative(s).

(b) The Archivist shall restrict public access to the information contained in those records identified as affected until—

(1) The date on which the former President waives the restriction on disclosure of the record or information contained within;

(2) The expiration of the period of restriction specified under 44 U.S.C. 2204(a) for the category of information under which a certain record, or a portion thereof, was restricted; or

(3) The Archivist has determined that the former President or an agent of the former President has placed in the public domain through publication a restricted record or a reasonably segregable portion thereof, if this date is earlier than either of the dates specified in paragraphs (b)(1) or (2) of this section.

§ 1270.42 Denial of access to public; right to appeal.

(a) Any person denied access to a Presidential record (hereinafter "the requester") because of a determination that the record or a reasonably segregable portion thereof was (1) properly restricted under 44 U.S.C. 2204(a), and (2) not placed in the public domain by the former President or his agent, may file an administrative appeal with the Assistant Archivist for Presidential Libraries (NL), Washington, DC 20408.

(b) Appeals shall be filed no later than 10 working days after the requester receives written notification that access to Presidential records has been denied.

(c) Appeals shall be in writing and shall set forth the reason(s) why the requester believes access to the records sought should be allowed. The requester shall identify the specific records sought.

(d) Upon receipt of an appeal, the Assistant Archivist for Presidential Libraries shall have 30 working days from the date an appeal is filed to consider the appeal and to respond in writing to the requester. The Assistant Archivist's response shall state whether or not the Presidential records requested are to be released and the basis for this determination. The decision of the Assistant Archivist to withhold release of Presidential records is final and not subject to judicial review.

§ 1270.44 Exceptions to restricted access.

(a) Notwithstanding any restrictions on access imposed pursuant to section 2204 or these regulations, and subject to any rights, defenses, or privileges which the United States or any agency or person may invoke, Presidential records shall be made available in the following instances:

(1) Pursuant to subpoena or other judicial process properly issued by a court of competent jurisdiction for the purposes of any civil or criminal investigation or proceeding;

(2) To an incumbent President if the records sought contain information which is needed for the conduct of current business of his office and is not otherwise available;

(3) To either House of Congress, or, to the extent of matter within its jurisdiction, to a Congressional committee or subcommittee if the records sought contain information which is needed for the conduct of business within its jurisdiction and is not otherwise available.

(b) Requests by an incumbent President, a House of Congress, or a Congressional committee or subcommittee pursuant to paragraph (a) of this section shall be addressed to the Archivist. All requests shall be in writing and, where practicable, identify the records sought with reasonable specificity.

(c) Presidential records of a former President shall be available to the former President or his designated representative upon request.

§ 1270.46 Notice of intent to disclose Presidential records.

(a) The Archivist or his designee shall notify a former President or his designated representative(s) before any Presidential records of his Administration are disclosed.

(b)(1) The notice given by the Archivist or his designee shall:

(i) Be in writing;

(ii) Identify the particular records with reasonable specificity;

(iii) State the reason for the disclosure; and

(iv) Specify the date on which the record will be disclosed.

(2) In the case of records to be disclosed in accordance with § 1270.44, the notice shall also:

(i) Identify the requester and the nature of the request;

(ii) Specify whether the requested records contain materials to which access would otherwise be restricted pursuant to 44 U.S.C. 2204(a) and identify the category of restriction within which the record to be disclosed falls; and

(iii) Specify the date of the request.

(c) If, after receiving the notice required by paragraph (a) of this section, a former President raises rights or privileges which he believes should preclude the disclosure of a Presidential record, and the Archivist nevertheless determines that the record in question should be disclosed, in whole or in part, the Archivist shall notify the former President or his representative of this determination. The notice given by the Archivist or his designee shall:

(1) Be in writing;

(2) State the basis upon which the determination to disclose the record is made; and

(3) Specify the date on which the record will be disclosed.

(d) The Archivist shall not disclose any records covered by any notice required by paragraphs (a) or (c) of this section for at least 30 calendar days from receipt of the notice by the former President, unless a shorter time period is required by a demand for Presidential records under § 1270.44.

(e) Copies of all notices provided to former Presidents under this section shall be provided at the same time to the incumbent President.

Subpart E—Presidential Records Compiled for Law Enforcement Purposes

§ 1270.50 Consultation with law enforcement agencies.

(a) For the processing of Presidential records compiled for law enforcement purposes that may be subject to 5 U.S.C. 552(b)(7), the Archivist shall request specific guidance from the appropriate Federal agency on the proper treatment of a record if there is no general guidance applicable, if the record is particularly sensitive, or if the type of record or information is widespread throughout the files.

(b) When specific agency guidance is requested under paragraph (a) of this section, the Archivist shall notify the appropriate Federal agency of the decision regarding disclosure of the specific documents. Notice shall include the following:

(1) A description of the records in question;

(2) Statements that the records described contain information compiled for law enforcement purposes and may be subject to the exemption provided by 5 U.S.C. 552(b)(7) for records of this type; and,

(3) The name of a contact person at NARA.

(c) Agency guidance under this section is not binding on the Archivist. The final determination on whether Presidential records may be subject to the exemption in 5 U.S.C. 552(b)(7) is the Archivist's responsibilty.

SUBCHAPTER F—NIXON PRESIDENTIAL MATERIALS

PART 1275—PRESERVATION AND PROTECTION OF AND ACCESS TO THE PRESIDENTIAL HISTORICAL MATERIALS OF THE NIXON ADMINISTRATION

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1275.70 Freedom of information requests.

AUTHORITY: Sec. 102(a) of the National Archives and Records Administration Act of 1984, Pub. L. 98-497; 44 U.S.C. 2104; and secs. 103 and 104 of the Presidential Recordings and Materials Preservation Act 88 Stat. 1695; 44 U.S.C. 2111 note.

SOURCE: 51 FR 7230, Feb. 28, 1986, unless otherwise noted.

§ 1275.1 Scope of part.

This part sets forth policies and procedures concerning the preservation and protection of and access to the tape recordings, papers, documents, memorandums, transcripts, and other objects and materials which constitute the Presidential historical materials of Richard M. Nixon, covering the period beginning January 20, 1969, and ending August 9, 1974.

Subpart A—General Provisions

§ 1275.10 Purpose.

This Part 1275 implements the provisions of Title I of the Presidential Recordings and Materials Preservation Act (Pub. L. 93-526; 88 Stat. 1695). It prescribes policies and procedures by which the National Archives and Records Administration will preserve, protect, and provide access to the Presidential historical materials of the Nixon Administration.

§ 1275.12 Application.

This Part 1275 applies to all of the Presidential historical materials of the Nixon Administration in the custody of the Archivist of the United States pursuant to the provisions of Title I of the Presidential Recordings and Materials Preservation Act (Pub. L. 93-526; 88 Stat. 1695).

§ 1275.14 Legal custody.

The Archivist of the United States has or will obtain exclusive legal custody and control of all Presidential historical materials of the Nixon Administration held pursuant to the provisions of Title I of the Presidential Recordings and Materials Preservation Act (Pub. L. 93-526; 88 Stat. 1695).

§ 1275.16 Definitions.

For the purposes of this Part 1275, the following terms have the meaning ascribed to them in this § 1275.16.

(a) *Presidential historical materials.* The term "Presidential historical materials" (also referred to as "historical materials" and "materials") shall mean all papers, correspondence, documents, pamphlets, books, photographs, films, motion pictures, sound and video recordings, machine-readable media, plats, maps, models, pictures, works of art, and other objects or materials made or received by former President Richard M. Nixon or by members of his staff in connection with his constitutional or statutory powers or duties as President and retained or appropriate for retention as evidence of or information about these powers or duties. Included in this definition are materials relating to the political activities of former President Nixon or members of his staff, but only when those activities directly relate to or have a direct effect upon the carrying out of constitutional or statutory powers or duties. Excluded from this definition are documentary materials of any type that are determined to be the official records of an agency of the Government; private or personal materials; stocks of publications, processed documents, and stationery; and extra copies of documents produced only for convenience or reference when they are clearly so identified.

(b) *Private or personal materials.* The term "private or personal materials" shall mean those papers and other documentary or commemorative materials in any physical form relating solely to a person's family or other non-governmental activities, including private political associations, and having no connection with his constitutional or statutory powers or duties as President or as a member of the President's staff.

(c) *Abuses of governmental power popularly identified under the generic term "Watergate."* The term "abuses of governmental power popularly identified under the generic term "Watergate" (also referred to as "abuses of governmental power"), shall mean those alleged acts, whether or not corroborated by judicial, administrative or legislative proceedings, which allegedly were conducted, directed or approved by Richard M. Nixon, his staff or persons associated with him in his constitutional or statutory functions as President, or as political activities directly relating to or having a direct effect upon those functions, and which (1) were within the purview of the charters of the Senate Select Committee on Presidential Campaign Activities or the Watergate Special Prosecution Force; or (2) are circumscribed in the Articles of Impeachment adopted by the House Committee on the Judiciary and reported to the House of Representatives for consideration in House Report No. 93-1305.

(d) *General historical significance.* The term "general historical significance" shall mean having administrative, legal, research or other historical value as evidence of or information about the constitutional or statutory powers or duties of the President, which an archivist has determined is of a quality sufficient to warrant the retention by the United States of materials so designated.

(e) *Archivist.* The term "archivist" shall mean an employee of the National Archives and Records Administration who, by education or experience, is specially trained in archival science.

(f) *Agency.* The term "agency" shall mean an executive department, military department, independent regulatory or nonregulatory agency, Government corporation, Government-controlled corporation, or other establishment in the executive branch of the Government including the Executive Office of the President. For purposes of § 1275.32 only, the term "agency" shall also include the White House Office.

(g) *Initial archival processing.* The term "initial archival processing" shall mean the following general acts performed by archivists with respect to the Presidential historical materials: Shelving boxes of documents in chronological, alphabetical, numerical or other sequence; surveying and developing a location register and cross-index of the boxes; arranging materials; reboxing the documents and affixing labels; producing finding aids such as folder title lists, cross-indexes, and subject lists; reproducing and transcribing tape recordings; reviewing the materials to idenfity items that appear subject to restriction; identifying items in poor physical condition and assuring their preservation; and identifying materials requiring further processing.

(h) *Staff.* The term "staff" shall mean those persons whose salaries were paid fully or partially from appropriations to the White House Office or Domestic Council, or who were detailed on a nonreimbursable basis to the White House Office or Domestic Council from any other Federal activity; or those pesons who otherwise were designated as assistants to the President, in connection with their service in that capacity; or any persons whose files were sent to the White House Central Files Unit or Special Files Unit, for purposes of those files.

(i) *National security classified information.* The term "national security classified information" shall mean any matter which is security classified under existing law, and has been or should be designated as such.

§ 1275.18 Requests or demands for access.

Each agency which receives a request or legal demand for access to Presidential historical materials of the Nixon Administration shall immediately forward the request or demand to the Archivist of the United States, National Archives and Records Administration (NARA), Washington, D.C. 20408.

Subpart B—Preservation and Protection

§ 1275.20 Responsibility.

The Archivist of the United States or his designated agent (hereinafter the Archivist) is responsible for the preservation and protection of the Presidential historical materials. He may arrange with other Federal agencies, acting pursuant to appropriate Federal authority, for assistance in their preservation and protection.

§ 1275.22 Security.

The Archivist is responsible for providing adequate security for the Presidential historical materials.

§ 1275.24 Archival processing.

When authorized by the Archivist and until the commencement of archival processing in accordance with Subpart D of this part, archivists may process the Presidential historical materials to the extent necessary for protecting and preserving the materials, and for providing authorized access to the materials pursuant to Subpart C of this part.

§ 1275.26 Access procedures.

(a) The Archivist will receive and/or prepare appropriate documentation of each access authorized under this Part 1275.

(b) Entry to the records storage areas will be provided by the Archivist only to archival, maintenance, security, or other necessary personnel or to Mr. Nixon or his agent. Two persons, at least one of whom represents the Archivist, will be present at all times that records storage areas are occupied.

(c) The Archivist will determine that each individual having access to the Presidental historical materials has a security clearance equivalent to the highest degree of national security classification that may be applicable to any of the material examined.

(d) The Archivist will provide former President Nixon or his designated attorney or agent (hereinafter Mr. Nixon), prior notice of, and allow him to be present during, each search necessary to comply with an authorized access under § 1275.32 or § 1275.34.

(e) Only NARA archivists shall conduct searches necessary to comply with authorized accesses under §§ 1275.32 and 1275.34.

(f) Prior to releasing Presidential historical materials in accordance with an access authorized under §§ 1275.32 or 1275.34, the Archivist will give Mr. Nixon notice of the nature and identity of, and at his request allow him access to, those Presidential historical materials which the archivists have determined are covered by the subpoena, or other lawful process, or request. The notice will also inform Mr. Nixon that he may file a claim with the Archivist objecting to the release of all or portions of the described materials within 5 workdays of his receiving the notice described herein. The claim should detail the alleged rights and privileges of Mr. Nixon which would be violated by the release of the materials. The Archivist will refrain from releasing any of the materials to the requester during this period, and while any claim of right or privilege is pending before him, will refrain from releasing the materials subject to the claim.

(g) The Archivist will notify Mr. Nixon in writing of the administrative determination on any claims filed in accordance with paragraph (f) of this section. In the event the determination is wholly or partially adverse to the claim, the Archivist will refrain from releasing the materials to the requester for an additional 5 workdays from Mr. Nixon's receipt of the determination.

(h) Whenever possible, a copy, which shall be certified upon request, instead of the original documentary Presidential historical materials shall be provided to comply with a subpoena or other lawful process or request. Whenever the original documentary material is removed, a certified copy of the material shall be inserted in the proper file until the return of the original.

§ 1275.28 Extraordinary authority during emergencies.

In the event of an emergency that threatens the physical preservation of the Presidential historical materials or their environs, the Archivist will take such steps as may be necessary, including removal of the materials to temporary locations outside the metropolitan area of the District of Columbia, to preserve and protect the materials.

Subpart C—Access to Materials by Former President Nixon, Federal Agencies, and For Use in Any Judicial Proceeding

§ 1275.30 Access by former President Nixon.

In accordance with the provisions of Subpart B of this part, former President Richard M. Nixon or his designated agent shall at all times have access to Presidential historical materials in the custody and control of the Archivist.

§ 1275.32 Access by Federal agencies.

In accordance with the provisions of Subpart B of this part, any Federal agency or department in the executive branch shall have access for lawful Government use to the Presidential historical materials in the custody and control of the Archivist to the extent necessary for ongoing Government business. The Archivist will only consider written requests from heads of agencies or departments, deputy heads of agencies or departments, or heads of major organizational components or functions within agencies or departments.

§ 1275.34 Access for use in judicial proceedings.

In accordance with the provisions of Subpart B of this part, and subject to any rights, defenses, or privileges which the Federal Government or any person may invoke, the Presidential historical materials in the custody and control of the Archivist will be made available for use in any judicial proceeding and are subject to subpoena or other lawful process.

Subpart D—Access by the Public

§ 1275.40 Scope of subpart.

This subpart sets forth policies and procedures concerning public access to the Presidential historical materials of Richard M. Nixon.

§ 1275.42 Processing period; notice of proposed opening.

(a) The Archivist will commence the initial archival processing of the materials. In processing the materials, the archivists will give priority to segregating private or personal materials and transferring them to their proprietary or commemorative owner in accordance with § 1275.48. As soon thereafter as possible, the Archivist will open for public access all of the materials in the Archivist's custody and control which are neither restricted pursuant to § 1275.50 or § 1275.52 nor subject to outstanding claims or petitions seeking such restrictions. The Archivist will open for public access each integral file segment of the materials upon completion of initial archival processing on that segment. Insofar as practicable, the Archivist will give priority in such initial archival processing to materials relating to abuses of governmental power as defined in § 1275.16(c).

(b) At least 30 calendar days prior to the opening to public access of any integral file segment of the materials, the Archivist will publish notice in the FEDERAL REGISTER of the proposed opening. The notice will reasonably identify the material to be opened and will include a reference to the right of any interested person to file a claim or petition in accordance with § 1275.44. Copies of the notice will be sent to the incumbent President of the United States or his designated agent and by first-class mail to the last known address of: Mr. Nixon, or his designated agent or heirs; any former staff member reasonably identifiable as the individual responsible for creating or maintaining the file segment proposed to be opened; any individual named in the material which the Archivist may not restrict in accordance with § 1275.50(b) because the material is essential to an understanding of any abuse of governmental power; and any persons named in the materials who are registered with the National Archives and Records Administration in accordance with paragraph (c) of this section.

(c) The Archivist will maintain a registry which shall contain the names and mailing addresses of persons who wish to receive personal notice of the proposed opening of integral file segments of the materials when those segments contain references about them. To be included in the registry, a person must submit his/her name and mailing address to the National Archives and Records Administration (NLN), Washington, D.C. 20408. Both the envelope and letter should be prominently marked, "Nixon Materials Registry." By submitting his/her name for inclusion in the registry, a person agrees to reimburse the United States for the cost of first-class postage for each instance of personal notice received.

§ 1275.44 Rights and privileges; right to a fair trial.

(a) Within 30 days following publication of the notice prescribed in § 1275.42(b), any person claiming a legal or constitutional right or privilege which would prevent or limit public access to any of the materials shall notify the Archivist in writing of the claimed right or privilege and the specific materials to which it relates. Unless the claim states that particular materials are private or personal (see paragraph (d) of this section), the Archivist will notify the claimant by certified mail, return receipt requested, of his decision regarding public access to the pertinent materials. If that decision is adverse to the claimant, the Archivist will refrain from providing public access to the pertinent materials for at least 30 calendar days from receipt by the claimant of such notice.

(b) Within 30 days following publication of the notice prescribed in § 1275.42(b), officers of any Federal, State, or local court and other persons who believe that public access to any of the materials may jeopardize an individual's right to a fair and impartial trial should petition the Archivist setting forth the relevant circumstances that warrant withholding specified materials. The Archivist will notify the petitioner by certified mail, return receipt requested, of his decision regarding public access to the pertinent materials. If that decision is adverse to the petitioner, the Archivist will refrain from providing public access to the pertinent materials for at least 30 calendar days from receipt by the petitioner of such notice.

(c) In reaching decisions required by paragraphs (a) and (b) of this section, the Archivist may consult with other appropriate Federal agencies. If these consultations require the transfer of copies of the materials to Federal officials in agencies other than the National Archives and Records Administration, the Archivist will transfer these copies in accordance with the procedures prescribed in §§ 1275.26 and 1275.32.

(d) Within 30 days following publication of notice prescribed in § 1275.42(b), any person claiming that materials proposed for public access are in fact private or personal, as defined in § 1275.16(b), and that he or she is the proprietary or commemorative owner of those materials shall notify the Archivist in writing. The claim shall describe the specific materials to which it refers, and the claimant's basis for concluding that these materials are private or personal. Upon receipt of such a claim, the Archivist will transmit it to the Presidential Materials Review Board for its consideration and determination in accordance with § 1275.46(i). The Archivist will refrain from providing public access to the pertinent materials or from returning them to the claimant for at least 30 calendar days from receipt by the claimant or any intervening parties of the Board's determination.

[51 FR 7230, Feb. 28, 1986; 51 FR 8671, Mar. 13, 1986]

§ 1275.46 Segregation and review; Senior Archival Panel; Presidential Materials Review Board.

(a) During the processing period described in § 1275.42(a), the Archivist will assign archivists to segregate private or personal materials, as defined in § 1275.16(b). The archivists shall have sole responsibility for the initial review and determination of private or personal materials. At all times when the archivists or other authorized officials have access to the materials in accordance with these regulations, they shall take all reasonable steps to minimize the degree of intrusion into private or personal materials. Except as provided in these regulations, the archivists or other authorized officials shall not disclose to any person private or personal or otherwise restricted information learned as a result of their activities under these regulations.

(b) During the processing period described in § 1275.42(a), the Archivist will assign archivists to segregate materials neither relating to abuses of governmental power, as defined in § 1275.16(c), nor otherwise having general historical significance, as defined in § 1275.16(d). The archivists shall have sole responsibility for the initial review and determination of those materials which are not related to abuses of governmental power and do not otherwise have general historical significance.

(c) During the processing period described in § 1275.42(a), the Archivist will assign archivists to segregate materials subject to restriction, as prescribed in §§ 1275.50 and 1275.52. The archivists shall have sole responsibility for the initial review and determination of materials that should be restricted. The archivists shall insert a notification of withdrawal at the front of the file folder or container affected by the removal of restricted material. The notification shall include a brief description of the restricted material and the basis for the restriction as prescribed in §§ 1275.50 and 1275.52.

(d) If the archivists are unable to make a determination required in paragraphs (a), (b), or (c) of this section, or if the archivists conclude that the required determination raises significant issues involving interpretation of these regulations or will have far-reaching precedential value, the archivists shall submit the pertinent materials, or representative examples of them, to a panel of senior archivists selected by the Archivist of the United States. The Panel shall then have the sole responsibility for the initial determination required in paragraphs (a), (b), or (c) of this section.

(e) If the Senior Archival Panel is unable to make a determination required in paragraph (d) of this section, or if the panel concludes that the required determination raises significant issues involving interpretation of these regulations or will have far-reaching precedential value, the Panel shall certify the matter and submit the pertinent materials, or representative examples of them, to the Presidential Materials Review Board.

(f) The Presidential Materials Review Board ("Board") shall consist of the Archivist of the United States, who shall serve as Chairman, and the following additional members:

(1) The Assistant Archivist for the Office of the National Archives;

(2) The Assistant Archivist for the Office of the Presidential Libraries;

(3) The Director of the Legal Counsel Staff of the National Archives and Records Administration; and

(4) The Historian of a Federal agency who shall be selected by the Archivist of the United States in his capacity as Chairman.

The Board shall meet at the call of the Chairman. Three members of the Board shall constitute a quorum for the conduct of the Board's business, although each member of the Board may participate in all of the Board's decisions. Members of the Board may be represented by their delegates on those occasions when they are unable to attend the meetings of the Board. The Board may consult with officials of interested Federal agencies in formulating its decisions. To the extent these consultations require the transfer of copies of materials to Federal officials outside the National Archives and Records Administration, the Board shall comply with the requirements of §§ 1275.26 and 1275.32.

(g) When the matter certified to the Board by the Senior Archival Panel involves a determination required in paragraphs (a) or (b) of this section, the Board shall prepare a final written decision, together with dissenting and concurring opinions, of the proper categorization and disposition of the pertinent materials. The Board's decision will be the final administrative determination.

(h) When the matter certified to the Board by the Senior Archival Panel involves a determination required in paragraph (c) of this section, the Board shall recommend an initial determination to the Senior Archival Panel, which shall retain the sole responsibility for the initial determination.

(i) When the Board considers a matter referred to it by the Archivist as provided in § 1275.44(d), it shall follow these procedures:

(1) The Board shall notify the claimant of its consideration of the claim, and invite the claimant to supplement at his discretion the basis for the claim.

(2) The Board will publish notice in the FEDERAL REGISTER, advising the public of its consideration of the claim, and describing the materials in question as fully as reasonbly possible without disclosing arguably private or personal information. The notice will further advise that any member of the public may petition the Board within 15 calendar days of the publication of notice, setting forth the intervenor's views concerning the public or private nature of the materials.

(3) The Board shall take into account the positions maintained by the claimant and any intervenors in reaching its decision. The Board shall issue its decision, including dissenting and concurring opinions, no sooner than 20 days nor later than 60 days from the publication of notice in the FEDERAL REGISTER provided in paragraph (h)(2), of this section. The Board's decision shall be the final administrative determination. The Archivist will notify the claimant and any intervenors of the Board's decision by certified mail, return receipt requested, and shall refrain from acting upon that decision for 30 calendar days as provided in § 1275.44(d).

§ 1275.48 Transfer of materials.

(a) The Archivist will transfer sole custody and use of those materials determined to be private or personal, or to be neither related to abuses of governmental power nor otherwise of general historical significance, to former President Nixon or his heirs or, when appropriate and after notifying Mr. Nixon or his designated agent, to the former staff member having primary proprietary or commemorative interest in the materials.

(b) Materials determined to be neither related to abuses of governmental power nor otherwise of general historical significance, and transferred pursuant to paragraph (a) of this section, shall upon such transfer no longer be deemed Presidential historical materials as defined in § 1275.16(a).

§ 1275.50 Restriction of materials related to abuses of governmental power.

(a) The Archivist will restrict access to materials determined during the processing period to relate to abuses of governmental power, as defined in § 1275.16(c), when:

(1) The Archivist, in accordance with § 1275.44, is in the process of reviewing or has determined the validity of a claim by any person of a legal or constitutional right or privilege; or

(2) The Archivist, in accordance with § 1275.44, is in the process of reviewing or has determined the validity of a petition by any person of the need to protect an individual's right to a fair and impartial trial; or

(3) The release of the materials would violate a Federal statute; or

(4) The materials are authorized under criteria established by Executive order to be kept secret in the interest of national defense or foreign policy, provided that any question as to whether materials are in fact properly classified or are properly subject to classification shall be resolved in accordance with the applicable Executive order or as otherwise provided by law. However, the Archivist may waive this restriction when:

(i)(A) The requester is engaged in a historical research project; or

(B) The requester is a former Federal official who had been appointed by the President to a policymaking position and who seeks access only to those classified materials which he originated, reviewed, signed or received while in public office; and

(ii) The requester has a security clearance equivalent to the highest degree of national security classification that may be applicable to any of the materials to be examined; and

(iii) The Archivist has determined that the heads of agencies having subject matter interest in the material do not object to the granting of access to the materials; and

(iv) The requester has signed a statement, which declares that the requester will not publish, disclose, or otherwise compromise the classified material to be examined and that the requester has been made aware of Federal criminal statutes which prohibit the compromise or disclosure of this information.

(b) The Archivist will restrict access to any portion of materials determined to relate to abuses of governmental power when the release of those portions would constitute a clearly unwarranted invasion of personal privacy or constitute libel of a living person: *Provided*, That if material related to an abuse of governmental power refers to, involves or incorporates such personal information, the Archivist will make available such personal information, or portions thereof, if such personal information, or portions thereof, is essential to an understanding of the abuses of governmental power.

§ 1275.52 Restriction of materials of general historical significance unrelated to abuses of governmental power.

(a) The Archivist will restrict access to materials determined during the processing period to be of general historical significance, but not related to abuses of governmental power, under one or more of the circumstances specified in § 1275.50(a).

(b) The Archivist will restrict access to materials of general historical significance, but not related to abuses of governmental power, when the release of these materials would:

(1) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential; or

(2) Constitute a clearly unwarranted invasion of personal privacy or constitute libel of a living person; or

(3) Disclose investigatory materials compiled for law enforcement purposes, but only when the disclosure of such records would:

(i) Interfere with enforcement proceedings;

(ii) Deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Constitute an unwarranted invasion of personal privacy;

(iv) Disclose the identity of a confidential source, and in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(v) Disclose investigative techniques and procedures; or

(vi) Endanger the life or physical safety of law enforcement personnel.

§ 1275.54 Periodic review of restrictions.

The Archivist periodically will assign archivists to review materials placed under restriction by § 1275.50 or § 1275.52 and to make available for public access those materials which, with the passage of time or other circumstances, no longer require restriction. If the archivists are unable to determine whether certain materials should remain restricted, the archivists shall submit the pertinent materials, or representative examples of them, to the Senior Archival Panel described in § 1275.44(d), which shall then have the responsibility for determining if the materials should remain restricted. The Senior Archival Panel may seek the recommendations of the Presidential Materials Review Board, in the manner prescribed in paragraph (e) and (h) of § 1275.46, in making its determination. Before opening previously restricted materials, the Archivist will comply with the notice requirements of § 1275.42(b).

[51 FR 7230, Feb. 28, 1986; 51 FR 8671, Mar. 13, 1986]

§ 1275.56 Appeal of restrictions.

Upon petition of any researcher who claims in writing to the Archivist that the restriction of specified materials is inappropriate and should be removed, the archivists shall submit the pertinent materials, or representative examples of them, to the Presidential Materials Review Board described in § 1275.46(f). The Board shall review the restricted materials, and consult with interested Federal agencies as necessary. To the extent these consultations require the transfer of copies of materials to Federal officials outside the National Archives and Records Administration, the Board shall comply with the requirements of §§ 1275.26 and 1275.32. As necessary and practicable, the Board shall also seek the views of any person, including former President Nixon, whose rights or privileges might be adversely affected by a decision to open the materials. The Board shall prepare a final written decision, including dissenting and concurring opinions, as to the continued restriction of all or part of the pertinent materials. The Board's decision shall be the final administrative determination. The Archivist will notify the petitioner and other interested persons of the final adminsitrative determination within 60 calendar days following receipt of such petition. If the Board's decision is to open previously restricted materials, the Archivist will comply with the notice requirements of § 1275.42(b).

§ 1275.58 Deletion of restricted portions.

The Archivist will provide a requester any reasonably segregable portions of otherwise restricted materials after the deletion of the portions which are restricted under this § 1275.50 or § 1275.52.

§ 1275.60 Requests for declassification.

Challenges to the classification and requests for the declassification of national security classified materials shall be governed by the provisions of 36 CFR part 1254 of this chapter, as that may be amended from time to time.

§ 1275.62 Reference room locations, hours, and rules.

The Archivist shall, from time to time, separately prescribe the precise location or locations where the materials shall be available for public reference, and the hours of operation and rules governing the conduct of researchers using such facilities. This information may be obtained by writing to: Office of Presidential Libraries (NL), The National Archives, Washington, DC 20408.

§ 1275.64 Reproduction of tape recordings of Presidential conversations.

(a) To ensure the preservation of original tape recordings of conversations which were recorded or caused to be recorded by any officer or employee of the Federal Government and which:

(1) Involve former President Richard M. Nixon or other individuals who, at the time of the conversation, were employed by the Federal Government; and

(2) Were recorded in the White House or in the office of the President in the Executive Office Buildings located in Washington, DC; Camp David, MD; Key Biscayne, FL; or San Clemente, CA; and

(3) Were recorded during the period beginning January 20, 1969, and ending August 9, 1974, the Archivist will produce duplicate copies of such tape recordings in his custody for public and official reference use. The original tape recordings shall not be available for public access.

(b) Since the original tape recordings may contain information which is subject to restriction in accordance with § 1275.50 or § 1275.52, the Archivists shall review the tapes and delete restricted portions from copies for public and official reference use.

(c) Researchers may listen to reference copies of the tape recordings described in paragraph (a) of this section in a National Archives building in the Washington, DC area and at other reference locations established by the Archivist in accordance with § 1275.62.

§ 1275.66 Reproduction and authentication of other materials.

(a) Copying for researchers of materials other than tape recordings described in § 1275.64 normally will be done by personnel of the National Archives and Records Administration using Government equipment. With the permission of the Archivist or his designated agent, a researcher may use his own copying equipment. Permission shall be based on the determination that such use will not harm the materials or disrupt reference activities. Equipment shall be used under the supervision of NARA personnel.

(b) The Archivist may authenticate and attest copies of materials when necessary for the purpose of the research.

(c) The fees for reproduction and authentication of materials under this section shall be those prescribed in the schedule set forth in part 1258 of this chapter or pertinent successor regulation, as that schedule is amended from time to time.

§ 1275.68 Amendment of regulations.

The Archivist may from time to time amend the regulations of this subpart D in accordance with the applicable law concerning such amendments.

§§ 1275.70 Freedom of information requests.

(a) The Archivist will process Freedom of Information Act requests for access to only those materials within the Presidential historical materials which are identifiable by an Archivist as records of an agency as defined in § 1275.16(f). The Archivist will process these requests in accordance with the Freedom of Information regulations set forth in § 1254.30 of this chapter or pertinent successor regulations.

(b) In order to allow NARA Archivists to devote as much time and effort as possible to the processing of materials for general public access, the Archivist will not process those Freedom of Information requests where the requester can reasonably obtain the same materials through a request directed to an agency (as defined in § 1275.16(f)), unless the requester demonstrates that he or she has unsuccessfully sought access from that agency or its successor in law or function.

SUBCHAPTER G—NARA FACILITIES

PART 1280—PUBLIC USE OF FACILITIES

Subpart A—General provisions.

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1280.40 Museum areas.
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Subpart D—Federal Records Centers and National Archives Field Branches

1280.60 Use of conference rooms.
1280.62 Restrictions on use.

AUTHORITY: 44 U.S.C. 2104(a).

EDITORIAL NOTE: Nomenclature changes to part 1280 appear at 50 FR 15728, Apr. 19, 1985.

Subpart A—General Provisions

SOURCE: 52 FR 23822, June 25, 1987, unless otherwise noted.

§ 1280.1 Applicability.

All persons using the facilities in the National Archives Building and the Presidential Libraries (referred to in this subpart as "NARA property") are subject to the provisions of subpart A of this part. Persons using other NARA facilities are subject to the GSA regulations, Conduct on Federal Property, at 41 CFR subpart 101-20.3.

§ 1280.3 Conformity with signs and directions.

Persons in and on NARA property shall at all times comply with official NARA signs (e.g., restrictions on smoking or parking) and with the directions of the guards and NARA staff.

§ 1280.4 Vehicular and pedestrian traffic.

(a) The blocking of entrances, driveways, walks, loading platforms, or fire hydrants on NARA property is prohibited.

(b) Except in emergencies, members of the public may not park in spaces reserved for holders of NARA parking permits.

§ 1280.5 Dogs and other animals.

Dogs and other animals, except seeing eye dogs or other guide dogs, may not be brought upon NARA property without permission of the appropriate NARA official.

§ 1280.6 Inspection.

Packages, briefcases, and other containers brought into, while on, or being removed from the NARA property are subject to inspection.

§ 1280.7 Distribution of handbills and other materials.

Distribution or posting of handbills, flyers, pamphlets or other materials on bulletin boards or elsewhere is prohibited on NARA property, except in those spaces designated by NARA as public forums. This prohibition also does not apply to displays or notices distributed as part of authorized Government activities or bulletin boards used by employees to post personal notices.

§ 1280.8 Prohibited activities.

(a) *Gambling.* Participating in games for money or other personal property or the operating of gambling devices, the conduct of a lottery or pool, or the selling or purchasing of numbers tickets, in or on NARA property is prohibited. This prohibition does not apply to the vending or exchange of chances by licensed blind operators of vending facilities for any lottery set forth in a State law and conducted by an agency of a State as authorized by section 2(a)(5) of the Randolph-Sheppard Act (20 U.S.C. 107, et. seq.).

(b) *Illegal drugs.* The possession or use of illegal drugs on NARA property and/or entering on NARA property under the influence of alcohol or any illegal drug is prohibited.

(c) *Weapons and explosives.* No person entering or while on NARA property shall carry or possess firearms, other dangerous or deadly weapons, either openly or concealed, except for official purposes. No person entering or while on NARA property shall carry or possess explosives, or items intended to be used to fabricate an explosive or incendiary device.

(d) *Soliciting, vending, and debt collection.* Charitable or commercial or political soliciting, vending of all kinds, displaying or distributing commercial advertising, or collecting private debts on NARA property is prohibited. National or local drives for funds for welfare, health or other purposes which are authorized by the Office of Personnel Management and approved by NARA are exempt from this paragraph.

(e) *Disturbances.* Loitering, disorderly conduct, or other conduct on NARA property which creates a loud or unusual noise or a nuisance; which unreasonably obstructs the usual use of entrances, foyers, lobbies, corridors, offices, elevators, stairways, or parking areas; which otherwise impedes or disrupts the performance of official duties by Government employees; or which prevents the general public from obtaining NARA-provided services in a timely manner, is prohibited.

(f) *Other.* The improper disposal of rubbish on NARA property; the willful destruction of or damage to NARA property; the theft of property; the creation of any hazard on NARA property to persons or things; or the throwing of any kind of articles from or at a NARA building is prohibited.

Subpart B—National Archives Building

§ 1280.10 Admittance of visitors to National Archives Exhibition Hall.

Unless otherwise directed by the Archivist of the United States, visitors are admitted to the Exhibition Hall from 10 a.m. to 9 p.m. except during winter months (the day after Labor Day through March 31) when the Exhibition Hall is closed at 5:30 p.m. The building is closed on Christmas Day. Visitors are admitted only through the Constitution Avenue entrance. However, the guards are authorized to admit handicapped visitors to the Exhibition Hall through the Pennsylvania Avenue entrance and the Main Floor gates.

[45 FR 29577, May 5, 1980. Redesignated and amended at 50 FR 15723, 15728, Apr. 19, 1985]

§ 1280.12 Photographing documents in exhibit areas.

Photographing documents or exhibits in the Exhibition Hall, the Pennsylvania Avenue lobby, or any other exhibit area in the National Archives Building is permitted without supplemental artificial light sources, or tripods or similar equipment at any time. However, photographs may not be taken on the steps or landing leading to the Declaration of Independence, the Constitution, and the Bill of Rights.

[52 FR 23822, June 25, 1987]

§ 1280.14 Artificial lighting in public areas.

Supplemental artificial lighting devices may be used with prior approval of the Public Affairs Officer (NSI) when filming documents in public areas of the National Archives Building subject to the following restrictions:

(a) Facsimiles shall be used in place of the Declaration of Independence, the Constitution, or the Bill of Rights if supplemental artificial lighting is to be used. When high intensity lighting is used, all other exhibited documents that fall within the boundaries of such illumination must be covered or replaced by facsimiles. If approval is granted for filming facsimiles or for filming other exhibited documents, a high intensity light source may not expose any exhibited item to more than 500 foot-candles nor be used to illuminate any one item for more than five minutes. The use of high intensity lighting in an exhibit area may not exceed one hour.

(b) Ladders, scaffolding, and tripods may be used after normal hours, but must be kept at a distance from documents greater than the height of the equipment.

(c) Auxiliary power units may be used. Existing lights will not be replaced by higher wattage or intensity lights. A NARA electrician must be present at all times whenever there is a change to the normal power supply. Organizations who film after regular hours will be billed for the electrician's time.

[39 FR 11885, Apr. 1, 1974. Redesignated and amended at 50 FR 15723, 15728, Apr. 19, 1985; 52 FR 23822, June 25, 1987]

§ 1280.16 The National Archives Library.

The National Archives Library is operated to meet the needs of researchers and NARA staff members. Other persons desiring to use library materials will generally be referred to public libraries and other possible sources of such materials.

[33 FR 4885, Mar. 22, 1968. Redesignated at 50 FR 15723, Apr. 19, 1985]

§ 1280.18 National Archives Theater and conference rooms.

The theater in the National Archives Building was designed and will be used primarily for furnishing reference services on the motion picture holdings of the National Archives. Conference rooms in the National Archives Building will be used for conferences and official meetings. When not required for such uses, conference rooms may be assigned to other organizations. Application for use of a room will be approved only if the purpose for which it is requested is educational or is related to the programs of the National Archives and Records Administration. The theater and conference rooms shall not be used to promote commercial enterprises or commodities, for political, sectarian, or similar purposes, or for meetings sponsored by profitmaking organizations. Use of the theater and conference rooms will not be authorized for any organization or group of individuals that engages in discriminatory practices proscribed in the Civil Rights Act of 1964 (42 U.S.C. 2000a, note).

[39 FR 11885, Apr. 1, 1974. Redesignated and amended at 50 FR 15723, 15728, Apr. 19, 1985]

§ 1280.20 Application for outside use of National Archives Theater and conference rooms.

(a) Applications for use of the theater and conference rooms shall be submitted in writing by the head of the requesting organization, or his duly authorized representative, at least 1 week in advance of the requested use. Applications for use shall be addressed to National Archives (NA), Washington, DC 20408, and shall include the following information:

(1) The name of the requesting organization;

(2) The date and the hours of contemplated use;

(3) A brief description of the programs;

(4) The number of persons expected to attend the meeting or performance (The capacity of the theater is 216 persons; conference rooms accommodate between 35 and 70 persons.);

(5) A statement regarding the intention to exhibit motion pictures or slides and, if so, the size (35mm or 16mm) of the film or slides, and whether the film to be shown is on nitrate or safety base; and

(6) Samples of any literature, folders, or posters to be distributed or exhibited at the meeting or performance.

(b) No program will be permitted to continue beyond 10 p.m.

(c) Applications for use on Saturdays, Sundays, holidays, or at times when the building is closed will be considered if fully justified.

(d) No admission fee will be charged, no indirect assessment will be made for admission, and no collection will be taken except as specifically authorized by the Archivist of the United States for special nonprofit-making events which are held by organizations sponsored by the National Archives and Records Administration. Commercial advertising or the sale of articles is not permitted.

(e) The serving or consumption of food or beverages within the theater is prohibited. Food or beverages may be served in the conference rooms if approved in advance.

(f) Smoking within the theater and conference rooms is prohibited. Smoking is allowed only in designated smoking areas.

(g) If the projection of motion pictures or slides is a part of the program, operators will be furnished by the National Archives and Records Administration on a reimbursable basis.

(h) Posting of any material about the premises is subject to prior approval.

(i) All persons attending meetings or performances will be required to go directly to the theater, which is on the fifth floor, or to the assigned conference room. No one will be admitted to the parts of the building that are closed to the public.

[33 FR 4885, Mar. 22, 1968, as amended at 39 FR 11885, Apr. 1, 1974; 41 FR 7750, Feb. 20, 1976. Redesignated and amended at 50 FR 15723, 15728, Apr. 19, 1985, further amended at 52 FR 23823, June 25, 1987]

§ 1280.22 Archivist's Reception Room.

The Archivist's Reception Room is primarily intended for meetings and other functions of NARA. The Archivist may sponsor, co-sponsor or, if the room is not scheduled for use by NARA, authorize the use of the room by other Federal agencies for official government functions, or by private individuals and organizations. Such use by private individuals and groups must be for the benefit of or in connection with the archival and records activities administered by the National Archives and Records Administration and must be consistent with the public perception of the National Archives as a research and cultural institution. The National Archives Trust Fund Board refurbished the Archivist's Reception Room from private gifts and donations. In order to maintain this Room in its present condition, as well as to cover the cost of additional cleaning, guard and other required services, the use of this Room by private individuals and organizations requires a donation to the National Archives Trust Fund. Federal agencies using the room for official government functions shall reimburse NARA only for the cost of additional guard and NARA staff services. The Archivist's Reception Room shall not be used to promote commercial enterprises or products or for political, sectarian, or similar purposes. Use of the Room will not be authorized for any organization or group that engages in discriminatory practices proscribed by the Civil Rights Act of 1964, as amended.

[52 FR 23823, June 25, 1987]

§ 1280.24 Application for outside use of the Archivist's Reception Room.

(a) Applications for use of the Archivist's Reception Room shall be submitted in writing by the private individual or by the head of the requesting organization or the duly authorized representative of the organization, normally 30 days in advance. Applications for use shall be submitted to the Assistant Archivist for Public Programs (NE), National Archives and Records Administration, Washington, DC 20408 and shall include the following:

(1) The name of the requesting organization or individual;

(2) The date and hours of contemplated use;

(3) A description of the purpose, anticipated number of attendees, and the name of the individual designated to serve as host and responsible official for the event;

(4) Whether audiovisual services are required (these must be provided by NARA on a reimbursible basis);

(5) Samples of any literature, folders, or posters to be distributed or exhibited.

(b) A donation to the National Archives Trust Fund to cover the costs involved in the maintenance and use of the Room is needed. Further information may be obtained from the Assistant Archivist for Public Programs.

(c) The Room is available from 8:00 a.m. until 9:30 p.m., Monday through Friday, and from 9:00 a.m. until 4:30 p.m. on Saturday. Use of the room at other hours requires the special approval of the Archivist. A NARA staff member must be available at all times when the room is in use.

(d) Those using the Room must obtain approval from NARA before distributing or displaying any item and must not misrepresent their identity to the public nor conduct any activities in a misleading or fraudulent manner. If any notice or advertisement is to mention the National Archives or incorporate its seal, the approval of the Archivist of the United States is required.

(e) Those using the Room must provide persons as needed to register guests, distribute approved literature, name tags, or similar material.

(f) NARA must approve in advance the use of a caterer who will bring beverages, food, or equipment into the National Archives Building. NARA must approve any equipment or decorations to be used and any entertainment to occur in the National Archives Building.

(g) No Government property shall be destroyed, displaced, or damaged by the user. The user must take prompt action to replace, return, restore, repair or repay NARA for any damage caused to Government property during the use of NARA facilities.

[52 FR 23823, June 25, 1987]

Subpart C—Facilities in Presidential Libraries

§ 1280.40 Museum areas.

(a) Unless otherwise directed by the library director, the hours of admission to museums of the libraries are as follows:

(1) Monday through Saturday, 9 a.m. to 5 p.m., including Federal legal holidays.

(2) Sunday, 2 p.m. to 5 p.m. (10 a.m. to 5 p.m. from May 16 to September 15), including Federal legal holidays.

(3) Museums will be closed on Thanksgiving, Christmas, and New Year's days.

(b) Visitors to the museums of the libraries may be required to check all parcels and luggage at designated places.

(c) Eating and smoking are prohibited in the museums of the libraries and in other library areas except where designated by the library director.

[33 FR 4885, Mar. 22, 1968. Redesignated at 50 FR 15723, Apr. 19, 1985]

§ 1280.42 Auditoriums and other public spaces.

(a) Presidential library auditoriums and other public spaces in the library buildings and the library grounds are intended primarily for the use of the library in carrying out its programs. These areas may also be used by other organizations for lectures, seminars, meetings, and similar activities when these activities are sponsored, cosponsored, or authorized by the Library to further the library's interests, and when such activities will not interfere with the normal operation of the library. Any activities sponsored, cosponsored, or authorized by the library must be related to the mission and programs of the library and must be consistent with the public perception of the library as a research and cultural institution. Application for such use shall be made in writing to the library director (see § 1253.3 of this chapter for the address).

(b) Use of the auditoriums and other public spaces will not be authorized for any profitmaking, commercial advertising and sales, sectarian, or similar purpose or for any use inconsistent with those authorized in paragraph (a) of this section.

(c) No admission fee will be charged except by the library, no indirect assessment fees will be made for admission, and no collections will be taken. The library director may assess additional charges to reimburse the Government for expenses incurred as a result of the use by groups of library facilities.

[48 FR 41770, Sept. 19, 1983. Redesignated at 50 FR 15723, Apr. 19, 1985, and amended at 52 FR 23823, June 25, 1987]

§ 1280.44 Supplemental rules.

Library directors may establish appropriate supplemental rules governing use of Presidential libraries and adjacent buildings and areas under NARA control.

[52 FR 23823, June 25, 1987]

§ 1280.46 Book collections.

The book collections of Presidential libraries are available to researchers needing the unique resources of such libraries and to NARA staff members. Other persons desiring to use the book collections will generally be referred to public libraries and other possible sources of such materials.

[35 FR 18737, Dec. 10, 1970. Redesignated at 50 FR 15723, Apr. 19, 1985]

§ 1280.48 Photographing documents.

(a) Visitors are permitted to take photographs in Presidential libraries and adjacent buildings open to the public, subject to restrictions set forth in paragraph (c) of this section.

(b) Photographs for news, advertising, or commercial purpose may be taken only after the Presidential library director approves the request.

(c) Artificial light devices shall not be used anywhere in a Presidential library where such use may cause damage to documents. Persons desiring to use photolighting devices shall request special permission from the director of the Presidential library concerned and shall follow procedures prescribed in § 1280.14(c).

[39 FR 11885, Apr. 1, 1974. Redesignated at 50 FR 15723, Apr. 19, 1985]

Subpart D—Federal Records Centers and National Archives Field Branches

§ 1280.60 Use of conference rooms.

Conference rooms in Federal Records Centers and National Archives Field Branches will be used for official meetings and for conferences sponsored by NARA. When not required for such use, assignments for other purposes during normal working hours may be made. Applications for such use will be approved only if the purpose for which it is requested is educational or is related to NARA programs. Applications for such use shall be made to the Federal Records Center Director or the National Archives Field Branch Director (see § 1253.6 of this chapter for the address).

[52 FR 23823, June 25, 1987]

§ 1280.62 Restrictions on use.

Use of the conference rooms will not be authorized for any profitmaking, political, sectarian, or similar purpose or for any organization or group that engages in discriminatory practices proscribed in the Civil Rights Act of 1964 (42 U.S.C. 2000a, note).

[39 FR 11885, Apr. 1, 1974. Redesignated and amended at 50 FR 15723, 15728, Apr. 19, 1985]

PART 1284—EXHIBITS

Sec.

1284.1 Scope of part.
1284.20 Temporary exhibition of privately-owned material.

AUTHORITY: 44 U.S.C. 2104(a).

§ 1284.1 Scope of part.

This part sets forth policies and procedures concerning the exhibition of materials at the National Archives Building.

[55 FR 25307, June 21, 1990]

§ 1284.20 Temporary exhibition of privately-owned material.

(a) Documents, paintings, or other objects belonging to private individuals or organizations normally will not be accepted for display at the National Archives Building except as part of a NARA-produced exhibit.

(b) NARA may accept for temporary special exhibit at the National Archives Building privately-owned documents or other objects under the following conditions:

(1) The material to be displayed relates to the institutional history of the National Archives and Records Admin-

istration or its predecessor organizations, the National Archives Establishment and the National Archives and Records Service;

(2) Exhibition space is available in the building that the NARA Office of Public Programs and the Document Conservation Branch judge to be appropriate in terms of security, light level, climate control, and available exhibition cases or other necessary fixtures; and

(3) NARA has resources (such as exhibit and security staff) available to produce the special exhibit.

(c) The Assistant Archivist for Public Programs (NE), in conjunction with the NARA General Counsel when appropriate, shall review all offers to display privately-owned material and shall negotiate the terms of exhibition for offers that can be accepted. The lender shall provide evidence of title to and authenticity of the item(s) to be displayed before any loan agreement is executed.

(d) The Assistant Archivist shall inform the offeror of NARA's decision within 60 days.

[55 FR 25307, June 21, 1990]

FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

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(Revised as of June 29, 1990)

The Director of the Federal Register has approved under 5 U.S.C. 552(a) and 1 CFR Part 51 the incorporation by reference of the following publications. This list contains only those incorporations by reference effective as of the revision date of this volume. Incorporations by reference found within a regulation are effective upon the effective date of that regulation. For more information on incorporation by reference, see the preliminary pages of this volume.

36 CFR Chapter XI

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

	36 CFR
American National Standards Institute 1430 Broadway, New York, NY 10018	
ANSI A117.1—1986 Providing Accessibility and Usability for Physically Handicapped People.	1190.31; 1190.32; 1190.33; 1190.40

36 CFR Chapter XII

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

American National Standards Institute 1430 Broadway, New York, NY 10018	
ANSI IT9.1–1989, Imaging Media (Film)—Silver-Gelatin Type—Specifications for Stability.	1230.3(b)
ANSI IT9.2–1988, Imaging Media—Photographic Processed Films, Plates, and Papers—Filing Enclosures and Storage Containers.	1230.3(b)
ANSI IT9.5–1988, Imaging Media (Film)—Ammonia-Processed Diazo Films—Specifications for Stability.	1230.3(b)
ANSI PH1.43–85 Photography (Film)—Processed Safety Film—Storage..	1230.3(b); 1232.4
ANSI PH1.48–82 For Photography (Film and Slides)—Black-and-White Photographic Paper Prints—Practice for Storage.	1232.4
ANSI PH1.67–1985, Photography (Film)—Processed Vesicular Film—Specifications for Stability.	1230.3(b)
ANSI/ASC PH1.28–84 For Photography (Film)—Archival Records, Silver-Gelatin Type, on Cellulose Ester Base.	1232.4
ANSI/ASC PH1.41–84 For Photography (Film)—Archival Records, Silver-Gelatin Type, on Polyester Base.	1232.4
ANSI/ASC PH1.53–84 For Photography (Processing)—Processed Films, Plates, and Papers—Filing Enclosures and Containers for Storage.	1232.4
ANSI/ISO 5/2–1985, ANSI PH2.19–1986, Photography (Sensitometry)—Density Measurements—Geometric Conditions for Transmission Density.	1230.3(b)
ANSI/ISO 5/3–1984, ANSI PH2.18–1985, Photography (Sensitometry)—Density Measurements—Spectral Conditions.	1230.3(b)
ISO 3334–1989, Micrographics—ISO resolution test chart No. 2—Description and use.	1230.3(b)
Association for Information and Image Management 1100 Wayne Avenue, Suite 1100, Silver Spring, MD 20910	

36 CFR Chapter XII—Continued

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION—Continued

ANSI/AIIM MS1–1988, Recommended Practice for Alphanumeric Computer-Output Microforms—Operational Practices for Inspection and Quality Control.	1230.3(c)
ANSI/AIIM MS5–1985, Micrographics—Microfiche	1230.3(c)
ANSI/AIIM MS14–1988, Specifications for 16mm and 35mm Roll Microfilm.	1230.3(c)
ANSI/AIIM MS19–1987, Recommended Practice for Identification of Microforms.	1230.3(c)
ANSI/AIIM MS23–1983, Practice for Operational Procedures/Inspection and Quality Control of First Generation, Silver-Gelatin Microfilm of Documents.	1230.3(c)
ANSI/AIIM MS32–1987, Microrecording of Engineering Source Documents on 35mm Microfilm.	1230.3(c)
ANSI/AIIM MS41–1988, Unitized Microfilm Carriers (Aperture, Camera, Copy, and Image Cards).	1230.3(c)
ANSI/AIIM MS43–1988, Recommended Practice for Operational Procedures/Inspection and Quality Control for Duplicate Microfilms of Documents and From COM.	1230.3(c)
AIIM Special Interest Package (SIP) No. 34, July, 1987, Microspots and Aging Blemishes.	1230.3(c)
National Fire Protection Association Batterymarch Park, Quincy, MA 02269	
NFPA 40–82 Standard for the Storage and Handling of Cellulose Nitrate Motion Picture Film.	1232.4
NFPA 232–86 Standard for the Protection of Records	1232.4
National Institute of Standards and Technology (formerly the National Bureau of Standards) Office of Standard Reference Materials, Rm. B311 Chemistry, Gaithersburg, MD 20899	
NBS–SRM 1010a, Microcopy Resolution Test Chart (ISO Test Chart No. 2), certified June 1, 1990.	1230.3(d)

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Architectural and Transportation Barriers Compliance Board	36, XI
Arms Control and Disarmament Agency, U.S.	22, VI
Army Department	32, V
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Federal Acquisition Regulation	48, 51
Benefits Review Board	20, VII
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Bilingual Education and Minority Languages Affairs, Office of	34, V
Blind and Other Severely Handicapped, Committee for Purchase from	41, 51
Board for International Broadcasting	22, XIII
Budget, Office of Management and	5, III
Census Bureau	15, I
Central Intelligence Agency	32, XIX
Child Support Enforcement, Office of	45, III
Christopher Columbus Quincentenary Jubilee Commission	45, XXII
Civil Rights Commission	45, VII
Civil Rights, Office for (Education Department)	34, I
Claims Collection Standards, Federal	4, II
Coast Guard	33, I; 46, I, III; 49, IV
Commerce Department	44, IV
Census Bureau	15, I
Economic Affairs, Under Secretary	37, V
Economic Analysis, Bureau of	15, VIII
Economic Development Administration	13, III
Endangered Species Committee	50, IV
Export Administration Bureau	15, VII
Federal Acquisition Regulation	48, 13
Fishery Conservation and Management	50, VI
International Trade Administration	15, III; 19, III
National Bureau of Standards	15, II
National Marine Fisheries Service	50, II, IV
National Oceanic and Atmospheric Administration	15, IX; 50, II, III, IV, VI
National Telecommunications and Information Administration	15, XXIII; 47, III
Patent and Trademark Office	37, I
Productivity, Technology and Innovation, Assistant Secretary for	37, IV
Secretary of Commerce, Office of	15, Subtitle A
Technology Administration	15, XI
United States Travel Service	15, XII
Commercial Space Transportation, Office of, Department of Transportation	14, III
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Commodity Futures Trading Commission	17, I
Community Planning and Development, Office of Assistant Secretary for	24, V, VI
Community Services, Office of	45, X
Comptroller of the Currency	12, I
Construction Industry Collective Bargaining Commission	29, IX
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Air Force Department	32, VII
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Engineers, Corps of	33, II; 36, III
Federal Acquisition Regulation	48, 2
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Secretary of Defense, Office of	32, I
Defense Logistics Agency	32, XII
Delaware River Basin Commission	18, III
Drug Enforcement Administration	21, II
East-West Foreign Trade Board	15, XIII
Economic Affairs, Under Secretary (Commerce)	37, V
Economic Analysis, Bureau of	15, VIII
Economic Analysis Staff, Department of Agriculture	7, XXXIX
Economic Development Administration	13, III
Economics Management Staff	7, XL
Economic Research Service	7, XXXVII
Education, Department of	
Bilingual Education and Minority Languages Affairs, Office of	34, V
Civil Rights, Office for	34, I
Educational Research and Improvement, Office of	34, VII
Elementary and Secondary Education, Office of	34, II
Federal Acquisition Regulation	48, 34
Postsecondary Education, Office of	34, VI
Secretary of Education, Office of	34, Subtitle A
Special Education and Rehabilitative Services, Office of	34, III
Vocational and Adult Education, Office of	34, IV
Educational Research and Improvement, Office of	34, VII
Elementary and Secondary Education, Office of	34, II
Employees' Compensation Appeals Board	20, IV
Employees Loyalty Board, International Organizations	5, V
Employment and Training Administration	20, V
Employment Standards Administration	20, VI
Endangered Species Committee	50, IV
Energy, Department of	10, II, III, X; 41, 109
Federal Acquisition Regulation	48, 9
Federal Energy Regulatory Commission	18, I
Energy, Office of, Department of Agriculture	7, XXIX
Engineers, Corps of	33, II; 36, III
Engraving and Printing, Bureau of	31, VI
Environmental Protection Agency	40, I; 41, 115; 48, 15
Environmental Quality, Office of (Agriculture Department)	7, XXXI
Equal Employment Opportunity Commission	29, XIV
Equal Opportunity, Office of Assistant Secretary for	24, I
Executive Office of the President	3, I
Administration, Office of	5, XV
Export Administration Bureau	15, VII
Export-Import Bank of the United States	12, IV
Family Assistance, Office of	45, II
Family Support Administration	45, II, III, IV, X
Farm Credit Administration	12, VI
Farm Credit System Assistance Board	12, XIII
Farmers Home Administration	7, XVIII
Federal Acquisition Regulation	48, 1
Federal Aviation Administration	14, I
Federal Claims Collection Standards	4, II
Federal Communications Commission	47, I
Federal Contract Compliance Programs, Office of	41, 60

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Federal Crop Insurance Corporation	7, IV
Federal Deposit Insurance Corporation	12, III
Federal Election Commission	11, I
Federal Emergency Management Agency	44, I; 48, 44
Federal Energy Regulatory Commission	18, I
Federal Financial Institutions Examination Council	12, XI
Federal Financing Bank	12, VIII
Federal Grain Inspection Service	7, VIII
Federal Highway Administration	23, I, II; 49, III
Federal Home Loan Mortgage Corporation	1, IV
Federal Housing Finance Board	12, IX
Federal Information Resources Management Regulations	41, Subtitle E, Ch. 201
Federal Inspector for the Alaska Natural Gas Transportation System, Office of	10, XV
Federal Labor Relations Authority, and General Counsel of the Federal Labor Relations Authority	5, XIV; 22, XIV
Federal Law Enforcement Training Center	31, VII
Federal Maritime Commission	46, IV
Federal Mediation and Conciliation Service	29, XII
Federal Mine Safety and Health Review Commission	29, XXVII
Federal Pay, Advisory Committee on	5, IV
Federal Prison Industries, Inc.	28, III
Federal Property Management Regulations	41, 101
Federal Property Management Regulations System	41, Subtitle C
Federal Railroad Administration	49, II
Federal Register, Administrative Committee of	1, I
Federal Register, Office of	1, II
Federal Reserve System	12, II
Federal Retirement Thrift Investment Board	5, VI
Federal Service Impasses Panel	5, XIV
Federal Trade Commission	16, I
Finance and Management, Department of Agriculture	7, XXX
Fine Arts Commission	45, XXI
Fiscal Service	31, II
Fish and Wildlife Service, United States	50, I, IV
Fishery Conservation and Management	50, VI
Fishing and Whaling, International Regulatory Agencies	50, III
Food and Drug Administration	21, I
Food and Nutrition Service	7, II
Food Safety and Inspection Service	9, III
Foreign Agricultural Service	7, XV
Foreign Assets Control, Office of	31, V
Foreign Claims Settlement Commission of United States	45, V
Foreign Economic Development Service	7, XXI
Foreign Service Grievance Board	22, IX
Foreign Service Impasse Disputes Panel	22, XIV
Foreign Service Labor Relations Board	22, XIV
Foreign-Trade Zones Board	15, IV
Forest Service	36, II
General Accounting Office	4, I, II, III
General Sales Manager, Office of	7, XXV
General Services Administration	
Contract Appeals Board	48, 61
Federal Acquisition Regulation	48, 5
Federal Information Resources Management Regulations	41, Subtitle E, Ch. 201
Federal Property Management Regulations System	41, 101, 105
Payment of Expenses Connected With the Death of Certain Employees	41, 303
Reduction in Meeting and Training Allowance Payments	41, 304
Relocation Allowances	41, 302
Travel Allowances	41, 301
Geological Survey	30, IV
Government Ethics, Office of	5, XVI
Government National Mortgage Association	24, III
Grants and Program Systems, Office of	7, XXXII
Great Lakes Pilotage	46, III

Agency	CFR Title, Subtitle or Chapter
Harry S. Truman Scholarship Foundation	45, XVIII
Health and Human Services, Department of	45, Subtitle A
Child Support Enforcement, Office of	45, III
Community Services, Office of	45, X
Family Assistance, Office of	45, II
Family Support Administration	45, II, III, IV, X
Federal Acquisition Regulation	48, 3
Food and Drug Administration	21, I
Health Care Financing Administration	42, IV
Human Development Services Office	45, XIII
Inspector General, Office of	42, V
Public Health Service	42, I
Refugee Resettlement, Office of	45, IV
St. Elizabeths Hospital	42, III
Social Security Administration	20, III; 45, IV
Health Care Financing Administration	42, IV
Housing and Urban Development, Department of	
Community Planning and Development, Office of Assistant Secretary for	24, V, VI
Equal Opportunity, Office of Assistant Secretary for	24, I
Federal Acquisition Regulation	48, 24
Government National Mortgage Association	24, III
Housing—Federal Housing Commissioner, Office of Assistant Secretary for	24, II, VIII, X, XX
Inspector General, Office of	24, XII
Mortgage Insurance and Loan Programs Under Emergency Homeowners' Relief Act	24, XV
Public and Indian Housing, Office of Assistant Secretary for	24, IX
Secretary, Office of	24, Subtitle A, VII
Solar Energy and Energy Conservation Bank	24, XI
Housing—Federal Housing Commissioner, Office of Assistant Secretary for	24, II, VIII, X, XX
Human Development Services Office	45, XIII
Immigration and Naturalization Service	8, I
Indian Affairs, Bureau of	25, I
Indian Arts and Crafts Board	25, II
Information Agency, United States	22, V; 48, 19
Information Resources Management, Office of, Agriculture Department	7, XXVII
Information Security Oversight Office	32, XX
Inspector General, Office of, Agriculture Department	7, XXVI
Inspector General, Office of, Health and Human Services Department	42, V
Inspector General, Office of, Housing and Urban Development Department	24, XII
Inter-American Foundation	22, X
Intergovernmental Relations, Advisory Commission on	5, VII
Interior Department	
Endangered Species Committee	50, IV
Federal Acquisition Regulation	48, 14
Federal Property Management Regulations System	41, 114
Fish and Wildlife Service, United States	50, I, IV
Geological Survey	30, IV
Indian Affairs, Bureau of	25, I
Indian Arts and Crafts Board	25, II
Land Management Bureau	43, II
Minerals Management Service	30, II
Mines, Bureau of	30, VI
National Park Service	36, I
Reclamation Bureau	43, I
Secretary of the Interior, Office of	43, Subtitle A
Surface Mining and Reclamation Appeals, Board of	30, III
Surface Mining Reclamation and Enforcement, Office of	30, VII
United States Fish and Wildlife Service	50, I, IV
Internal Revenue Service	26, I

Agency	CFR Title, Subtitle or Chapter
International Boundary and Water Commission, United States and Mexico	22, XI
International Cooperation and Development Office, Department of Agriculture	7, XXII
International Development, Agency for	22, II
International Development Cooperation Agency	22, XII
International Development, Agency for	22, II
Overseas Private Investment Corporation	22, VII
International Joint Commission, United States and Canada	22, IV
International Organizations Employees Loyalty Board	5, V
International Regulatory Agencies (Fishing and Whaling)	50, III
International Trade Administration	15, III; 19, III
International Trade Commission, United States	19, II
Interstate Commerce Commission	49, X
Japan-United States Friendship Commission	22, XVI
Joint Board for the Enrollment of Actuaries	20, VIII
Justice Department	28, I; 41, 128
Drug Enforcement Administration	21, II
Federal Acquisition Regulation	48, 28
Federal Claims Collection Standards	4, II
Federal Prison Industries, Inc.	28, III
Foreign Claims Settlement Commission of the United States	45, V
Immigration and Naturalization Service	8, I
Offices of Independent Counsel	28, VI
Prisons, Bureau of	28, V
Labor Department	
Benefits Review Board	20, VII
Employees' Compensation Appeals Board	20, IV
Employment and Training Administration	20, V
Employment Standards Administration	20, VI
Federal Acquisition Regulation	48, 29
Federal Contract Compliance Programs, Office of	41, 60
Federal Procurement Regulations System	41, 50
Labor-Management Relations and Cooperative Programs, Bureau of	29, II
Labor-Management Standards, Office of	29, IV
Mine Safety and Health Administration	30, I
Occupational Safety and Health Administration	29, XVII
Pension and Welfare Benefits Administration	29, XXV
Public Contracts	41, 50
Secretary of Labor, Office of	29, Subtitle A
Veterans' Employment and Training, Office of the Assistant Secretary for	41, 61; 20, IX
Wage and Hour Division	29, V
Workers' Compensation Programs, Office of	20, I
Labor-Management Relations and Cooperative Programs, Bureau of	29, II
Labor-Management Standards, Office of	29, IV
Land Management, Bureau of	43, II
Legal Services Corporation	45, XVI
Library of Congress	36, VII
Copyright Office	37, II
Management and Budget, Office of	5, III
Marine Mammal Commission	50, V
Maritime Administration	46, II
Merit Systems Protection Board	5, II
Micronesian Status Negotiations, Office for	32, XXVII
Mine Safety and Health Administration	30, I
Minerals Management Service	30, II
Mines, Bureau of	30, VI
Minority Business Development Agency	15, XIV
Miscellaneous Agencies	1, IV
Monetary Offices	31, I

Agency	CFR Title, Subtitle or Chapter
Mortgage Insurance and Loan Programs Under the Emergency Homeowners' Relief Act, Department of Housing and Urban Development	24, XV
National Aeronautics and Space Administration	14, V; 48, 18
National Agricultural Library	7, XLI
National Agricultural Statistics Service	7, XXXVI
National Archives and Records Administration	36, XII
National Bureau of Standards	15, II
National Capital Planning Commission	1, IV
National Commission for Employment Policy	1, IV
National Commission on Libraries and Information Science	45, XVII
National Credit Union Administration	12, VII
National Foundation on the Arts and the Humanities	45, XI
National Highway Traffic Safety Administration	23, II, III; 49, V
National Labor Relations Board	29, I
National Marine Fisheries Service	50, II, IV
National Mediation Board	29, X
National Oceanic and Atmospheric Administration	15, IX; 50, II, III, IV, VI
National Park Service	36, I
National Railroad Adjustment Board	29, III
National Railroad Passenger Corporation (AMTRAK)	49, VII
National Science Foundation	45, VI; 48, 25
National Security Council	32, XXI
National Security Council and Office of Science and Technology Policy	47, II
National Telecommunications and Information Administration	15, XXIII; 47, III
National Transportation Safety Board	49, VIII
Navajo and Hopi Indian Relocation Commission	25, IV
Navy Department	32, VI; 48, 52
Neighborhood Reinvestment Corporation	24, XXV
Nuclear Regulatory Commission	10, I
Occupational Safety and Health Administration	29, XVII
Occupational Safety and Health Review Commission	29, XX
Office of Independent Counsel	28, VII
Offices of Independent Counsel, Department of Justice	28, VI
Operations Office, Department of Agriculture	7, XXVIII
Overseas Private Investment Corporation	22, VII
Oversight Board	12, XV
Packers and Stockyards Administration	9, II
Panama Canal Commission	48, 35
Panama Canal Regulations	35, I
Patent and Trademark Office	37, I
Payment of Expenses Connected With the Death of Certain Employees	41, 303
Peace Corps	22, III
Pennsylvania Avenue Development Corporation	36, IX
Pension and Welfare Benefits Administration, Department of Labor	29, XXV
Pension Benefit Guaranty Corporation	29, XXVI
Personnel Management, Office of	5, I; 45, VIII; 48, 17
Federal Employees Health Benefits Acquisition Regulation	48, 16
Postal Rate Commission	39, III
Postal Service, United States	39, I
Postsecondary Education, Office of	34, VI
President's Commission on White House Fellowships	1, IV
Presidential Documents	3
Prisons, Bureau of	28, V
Productivity, Technology and Innovation, Assistant Secretary (Commerce)	37, IV
Property Management Regulations System, Federal	41, Subtitle C
Public Contracts, Department of Labor	41, 50
Public Health Service	42, I
Railroad Retirement Board	20, II
Reclamation Bureau	43, I

Agency	CFR Title, Subtitle o Chapter
Reduction in Meeting and Training Allowance Payments	41, 304
Refugee Resettlement, Office of	45, IV
Regional Action Planning Commissions	13, V
Relocation Allowances	41, 302
Research and Special Programs Administration	49, I
Resolution Trust Corporation	12, XVI
Rural Electrification Administration	7, XVII
Rural Telephone Bank	7, XVI
Saint Elizabeths Hospital	42, III
Saint Lawrence Seaway Development Corporation	33, IV
Science and Technology Policy, Office of	32, XXIV
Science and Technology Policy, Office of, and National Security Council	47, II
Secret Service	31, IV
Securities and Exchange Commission	17, II
Selective Service System	32, XVI
Small Business Administration	13, I; 48, 22
Smithsonian Institution	36, V
Social Security Administration	20, III; 45, IV
Soil Conservation Service	7, VI
Solar Energy and Energy Conservation Bank, Department of Housing and Urban Development	24, XI
Soldiers' and Airmen's Home, United States	5, XI
Special Counsel, Office of	5, VIII
Special Education and Rehabilitative Services, Office of	34, III
State Department	22, I
Federal Acquisition Regulation	48, 6
Surface Mining and Reclamation Appeals, Board of	30,III
Susquehanna River Basin Commission	18, VIII
Technology Administration	15, XI
Tennessee Valley Authority	18, XIII
Thrift Supervision Office, Department of the Treasury	12, V
Trade Representative, United States, Office of	15, XX
Transportation, Department of	44, IV
Coast Guard	33, I; 46, I, III; 49, IV
Commercial Space Transportation, Office of	14, III
Contract Appeals Board	48, 63
Federal Acquisition Regulation	48, 12
Federal Aviation Administration	14, I
Federal Highway Administration	23, I, II; 49, III
Federal Railroad Administration	49, II
Maritime Administration	46, II
National Highway Traffic Safety Administration	23, II, III; 49, V
Research and Special Programs Administration	49, I
Saint Lawrence Seaway Development Corporation	33, IV
Secretary of Transportation, Office of	14, II; 49, Subtitle A
Urban Mass Transportation Administration	49, VI
Transportation, Office of, Department of Agriculture	7, XXXIII
Travel Allowance	41, 301
Travel Service, United States	15, XII
Treasury Department	17, IV
Alcohol, Tobacco and Firearms, Bureau of	27, I
Comptroller of the Currency	12, I
Customs Service, United States	19, I
Engraving and Printing, Bureau of	31, VI
Federal Acquisition Regulation	48, 10
Federal Law Enforcement Training Center	31, VII
Fiscal Service	31, II
Foreign Assets Control, Office of	31, V
Internal Revenue Service	26, I
Monetary Offices	31, I
Secret Service	31, IV
Secretary of the Treasury, Office of	31, Subtitle A
Thrift Supervision Office	12, V
United States Customs Service	19, I
Truman, Harry S. Scholarship Foundation	45, XVIII

Agency	CFR Title, Subtitle or Chapter
United States and Canada, International Joint Commission	22, IV
United States Arms Control and Disarmament Agency	22, VI
United States Customs Service	19, I
United States Fish and Wildlife Service	50, I, IV
United States Information Agency	22, V; 48, 19
United States International Development Cooperation Agency	22, XII
United States International Trade Commission	19, II
United States Postal Service	39, I
United States Soldiers' and Airmen's Home	5, XI
United States Trade Representative, Office of	15, XX
United States Travel Service	15, XII
Urban Mass Transportation Administration	49, VI
Veterans Affairs Department	38, I; 48, 8
Veterans' Employment and Training, Office of the Assistant Secretary for	41, 61; 20, IX
Vice President of the United States, Office of	32, XXVIII
Vocational and Adult Education, Office of	34, IV
Wage and Hour Division	29, V
Water Resources Council	18, VI
Workers' Compensation Programs, Office of	20, I
World Agriculture Outlook Board	7, XXXVIII

Redesignation Table No. 1

Chapter I of title 36 was reorganized at 31 FR 16650, Dec. 29, 1966. Part 251 of chapter II was transferred in part to parts 291 through 294 at 38 FR 5851, Mar. 5, 1973. The following tables show the relationship of the former parts and sections to the current ones.

New Section	Former section No.
Part 291—Occupancy and Use of Developed Sites and Areas of Concentrated Public Use	
291.1 [Reserved]	
291.2	251.90
291.3	251.91
291.4	251.92
291.5	251.93
291.6	251.94
291.7	251.95
291.8	251.96
291.9	251.25a
Part 292—National Recreation Areas	
292.1-292.10 [Reserved]	
292.11	251.40
292.12	251.41
292.13	251.42
292.14-292.19 [Reserved]	
Part 293—Wilderness—Primitive Areas	
293.1	251.70
293.2	251.71
293.3	251.72
293.4	251.73
293.5	251.74
293.6	251.75
293.7	251.76
293.8	251.77
293.9	251.78
293.10	251.79
293.11	251.80
293.12	251.81
293.13	251.82
293.14	251.83
293.15	251.84
293.16	251.85
293.17	251.86
Part 294—Special Areas	
294.1	251.22
294.2(a)	251.26
294.2(b)	251.27
294.2(c)	251.28
294.2(d)	251.29
294.2(e)	251.30
294.2(f)	251.31

Redesignation Table No. 2

Chapter XII of title 36, parts 1201 through 1228 was transferred to chapter I, parts 60 through 72 at 46 FR 34329, July 1, 1981 and corrected at 46 FR 43045, Aug. 26, 1981. The following table shows the relationship of the former parts to the current ones.

New Part Nos.	Old Part Nos.
60	1202
61	1201
62	1212
63	1204
64	1226
65	1205

New Part Nos.	Old Part Nos.
71	1227
67	1206
68	1207
72	1228

Redesignation Table No. 3

In Chapter II of title 36, part 223 was reorganized at 49 FR 2760, Jan. 23, 1984. The following tables show the relationship of the former sections to the current ones.

Former part 223 section designation	New part 223 section designation
223.1(a)	223.1.
223.1(b)	223.2.
223.1(c)	223.3.
223.1(d)	223.4.
223.1(e)(1)(2)	223.5(a)(b).
223.1(e)(3), first 3 sentences	223.6.
223.1(e)(3), rest of paragraph	223.7.
223.1(e)(4)(5)	223.8(a)(b).
223.1(e)(6)	223.9.
223.1(f)	223.10.
223.1(g)(1)(2)	223.11(a)(b).
223.1(h) introductory text, (1)–(3).	223.12 introductory text, (a)–(c).
223.1(i)	223.13.
223.2(a)–(f)	223.14(a)–(f).
223.3(a) introductory text, (1)–(8).	223.30 introductory text, (a)–(h).
223.3(b)	223.31.
223.3(c)	223.32.
223.3(d)	223.33.
223.3(e)	223.34.
223.3(f)	223.35.
223.3(g)(1)(2)	223.36(a)(b).
223.3(h)	223.37.
223.3(i)	223.38.
223.3(j)	223.39.
223.3(k)	223.40.
223.3(l)	223.41.
223.3(m)(1), 1st three sentences.	223.42.
223.3(m)(1), 4th sentence, (i)–(iii).	223.43(a) introductory text, (1)–(3).
223.3(m)(1), remainder	223.43(b).
223.3(m)(2)	223.44.
223.3(m)(3)	223.45.
223.3(n)	223.46.
223.3(o), first sentence	223.47(a).
223.3(o), second sentence	223.47(b).
223.3(o), third sentence	223.47(c).
223.3(o), fourth sentence	223.47(d).
223.3(o), fifth and sixth sentences.	223.47(e).
223.3(o), seventh sentence	223.47(f).
223.3(p) introductory text, (1)–(3).	223.48 introductory text, (a)–(c).
223.4(a)	223.60.
223.4(b)	223.61.
223.4(c)	223.62.
223.4(d)	223.63.
223.4(e) introductory text, (1)–(4).	223.64 introductory text, (a)–(d).
223.4(f)	223.65.
223.4(g)	223.66.
223.5(a)	223.80.
223.5(b)	223.81.
223.5(c)	223.82.
223.5(d) introductory text, (1)–(8).	223.83 introductory text, (a)–(h).
223.5(e) introductory text, (1)–(7).	223.84 introductory text, (a)–(g).
223.5(f) introductory text, (1)–(3).	223.85 introductory text, (a)–(c).
223.5(g)	223.86.
223.5(h)(1) introductory text, (i) and (ii).	223.87(a) introductory text, (1) and (2).
223.5(h)(2) (i)–(iii)	223.87(b) introductory text, (1)–(3)(iii).
223.5(h)(3)	223.87(c).
223.5(h)(4) introductory text, (i) and (ii).	223.88 introductory text, (a)–(c).
223.5(i) introductory text, (1)–(4).	223.86 introductory text, (a)–(e).
223.6(a)–(f)	223.89(a)–(f).
223.7(b)	223.90.
223.7(a) introductory text, (1)–(5).	223.100 introductory text, (a)–(e).
223.7(c)	223.101.
223.7(d)	223.102.
223.7(e)	223.103.
223.8(a)	223.110.
223.8(b) introductory text, (1)–(4).	223.111 introductory text, (a)–(d).
223.8(c)	223.112.
223.8(d)	223.113.
223.8(e) introductory text, (1) and (2).	223.114 introductory text, (a) and (b).
223.8(f) introductory text, (1) and (2).	223.115 introductory text, (a) and (b).
223.9(a)–(c)	223.116(a)–(c).
223.10(a) introductory text, (1)–(10).	223.160 introductory text, (a)–(j).
223.10(b)	223.162.
223.10(c)	223.161.
223.10(d) introductory text, (1)–(3).	223.163 introductory text, (a)–(c).
223.10(e)	223.164.
223.11	223.17.
223.12(a)	223.130.
223.12(b)	223.131.
223.12(c)	223.132.
223.12(d)	223.133.
223.12(e)	223.134.
223.12(f)	223.135.
223.12(g)	223.136.
223.12(h)	223.137.
223.12(i)	223.138.
223.12(j)	223.139.
223.12(k)	223.140.

Redesignation Table

Former part 223 section designation	New part 223 section designation
223.12(l)	223.141.
223.12(m)	223.142.
223.12(n)	223.143.
223.12(o)	223.144.
223.12(p)	223.145.

Redesignation Table No. 4

Title 36 of the Code of Federal Regulations was amended at 50 FR 15723, Apr. 19, 1985, by transferring and redesignating certain regulations appearing in 41 CFR chapters 101 and 105. The following table shows the relationship of the former CFR part, subpart and section numbers under 41 CFR chapters 101 and 105 and new part, subpart and section numbers in 36 CFR chapter XII.

Former section numbers	New section numbers
Subpart 101-11.3a	Part 1260
101-11.320	1260.1
101-11.321	1260.2
101-11.322	Subpart A
101-11.322-1	1260.10
101-11.322-2	1260.12
101-11.323	Subpart B
101-11.323-1	1260.20
101-11.323-2	1260.22
101-11.324	Subpart C
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101-11.324-2	1260.32
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101-11.405-1	1228.30
101-11.405-2	1228.2
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101-11.406-6	1228.68
101-11.406-7	1228.70
101-11.406-8	1228.72
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101-11.407	Subpart E
101-11.407-1	1228.90
101-11.407-2	1228.92
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101-11.409	Subpart G
101-11.409-1	1228.120
101-11.409-2	1228.122
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101-11.409-6	1228.130
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101-11.410	Subpart H
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101-11.410-2	1228.152
101-11.410-3	1228.154
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101-11.411-12	1228.200
101-11.412	Subpart J
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101-13.7	1239.14
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105-61.001-6	1252.2
105-61.001-7	1252.2
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105-61.101-1	1254.1
105-61.101-2	1254.2
105-61.101-3	1254.4
105-61.101-4	1254.6
105-60.601-2	1254.8
105-61.102	Subpart B
105-61.102-1	1254.10
105-61.102-2	1254.12
105-61.102-2a	1254.14
105-61.102-3	1254.16
105-61.102-4	1254.18
105-61.102-5	1254.20
105-61.102-6	1254.22
105-61.102-7	1254.24
105-61.103	Subpart C
105-61.103-1	1254.30
105-61.103-2	1254.32
105-61.103-3	1254.34
105-61.104	1254.40
105-61.104-1	1254.42
105-61.104-2	1254.44
105-61.104-3	1254.46
105-61.104-4	1254.48
105-61.104-5	1254.50
105-61.104-6	1254.52
105-61.104-7	1254.54
105-61.104-8	1254.56
105-61.104-9	1254.58
105-61.105	1254.70
105-61.106-1	1254.72
105-61.106-2	1254.74
105-61.107	1254.76
105-61.108-1	1258.1
105-61.202	1254.36
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105-61.302	Subpart A
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105-61.302-2	1280.12
105-61.302-3	1280.14
105-61.303	1280.16
105-61.304-1	1280.18
105-61.304-2	1280.20
105-61.305	Subpart B
105-61.305-1	1280.40
105-61.305-2	1280.42
105-61.305-3	1280.44
105-61.305-4	1280.46
105-61.305-5	1280.48
105-61.306(a)	1280.60
105-61.306(b)	1280.62
105-61.307	1280.1
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105-61.5101-4	1253.4
105-61.5101-5	1253.5
105-61.5101-6b	1253.6(e)
105-61.5101-7	1253.6
105-61.5101-7(a)	1253.6(a)
105-61.5101-7(b)	1253.6(b)
105-61.5101-7(c)	1253.6(c)
105-61.5101-7(d)	1253.6(f)
105-61.5101-7(e)	1253.6(g)
105-61.5101-7(f)	1253.6(h)
105-61.5101-7(g)	1253.6(i)
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105-61.5101-7(i)	1253.6(k)
105-61.5101-7(j)	1253.6(l)
105-61.5101-7(k)	1253.6(m)
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105-61.5202	1258.4
105-61.5203	1258.6
105-61.5204	1258.8
105-61.5205	1258.10
105-61.5206	1258.12
105-61.5207	1258.14
105-61.5208	1258.16
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105-61.5300	1256.1
105-61.5301	1256.2
105-61.5302	Subpart A
105-61.5302-1	1256.10
105-61.5302-2	1256.12
105-61.5302-3	1256.14
105-61.5302-4	1256.16
105-61.5302-5	1256.18
105-61.5303	Subpart B
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105-65.000	1206.1
105-65.001	1206.2
105-65.002	1206.4
105-65.003	1206.6
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105-65.100	1206.10
105-65.101	1206.12
105-65.102	1206.14
105-65.103-1	1206.16
105-65.103-2	1206.18
105-65.104-1	1206.20
105-65.104-2	1206.22
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105-65.201	1206.32
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105-65.203-1	1206.36
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105-65.302-2	1206.56
105-65.302-3	1206.58
105-65.303	1206.60
105-65.303-1	1206.62
105-65.303-2	1206.64

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105–65.306	1206.70
105–65.307	1206.72
105–65.308	1206.74
105–65.309	1206.76
105–65.310	1206.78
105–65.311	1206.80
105–65.312	1206.82
105–65.313	1206.84
105–65.314	1206.86
105–65.315	1206.88
105–65.316	1206.90
105–65.317	1206.92
105–65.318	1206.94

Distribution Table

Title 36 of the Code of Federal Regulations was amended at 50 FR 26930, June 28, 1985. The following distribution table reflects the old regulations in 41 CFR part 101-11 and the new rewritten regulations in 36 CFR chapter XII.

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101-11.000	1220.1.
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101-11.101	Subpart A.
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101-11.101-2	1220.12.
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101-11.102	Subpart B.
101-11.102-1	1220.30.
101-11.102-2	1220.32.
101-11.102-3	1220.34.
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101-11.103	Subpart C.
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101-11.103-3	1220.52.
101-11.103-4	1220.54.
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101-11.202-1	1222.10.
101-11.202-2	1222.20.
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101-11.501	1230.2.
101-11.502	1230.4.
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101-11.506-1	1230.10.
101-11.506-2	1230.12.
101-11.506-3	1230.14.
101-11.507	Subpart B.
101-11.507-1	1230.20.
101-11.507-2	1230.22.
101-11.508	1230.24.
101-11.509	1230.26.
101-11.510	Subpart C.
101-11.510-1	1230.50.
101-11.510-3	1230.52.
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101-11.1000	1238.1.
101-11.1005	1238.2.
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101-11.1300	1232.1.
101-11.1302	1232.2.
101-11.1303	1232.4.
101-11.1304	1232.6.

Derivation Table

At 55 FR 27428, July 2, 1990, a document was published restructuring pa 1228 of Chapter XII. For the convenience of the user, the following Derivatio Table shows the relationship of the new regulations to the old regulations.

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1228.1	1228.1
1228.10	1228.10
1228.12	1228.12
1228.20(a)	1228.30
1228.20(b)	1228.60
1228.22	1228.12
1228.22(a)	
1228.22(b)	1228.12(a)
1228.22(c)	
1228.22(d)	1228.12(b)
1228.22(e)	1228.12(c)
1228.22(f)	1228.12(d)
1228.24(a)	1228.20(a)
1228.24(b)	1228.20(b)
1228.24(b)(1)	1228.20(b)(1)
1228.24(b)(2)	1228.20(b)(3)
1228.24(b)(3)	1228.20(b)(4)
1228.24(b)(4)	1228.20(b)(5)
1228.24(c)	1228.20(c)
1228.26(a)	
1228.26(a)(1)	1228.20(b)
1228.26(a)(2)	1228.20(b)(6)
1228.26(b)	1228.20(d)
1228.26(c)	1228.20(e)
1228.28(a)	
1228.28(b)(1)	
1228.28(b)(2)	
1228.28(b)(3)	
1228.28 (b)(4) through (b)(7)	1228.32(b)
1228.28(b)(8)(i)	1228.32(c)
1228.28(b)(8)(ii)	1228.32(d)
1228.28(c)	1228.34(a)
1228.28(c)(1)	1228.34(b)
1228.28(c)(2)	1228.34(c)
1228.30(a)	
1228.30(b)	
1228.30(c)	1228.34(d)
1228.30(d)	1228.64
1228.30(e)	
1228.32	1228.70
1228.40	1228.22, 1228.22(a)(1) and 1228.22(a)(2)
1228.42(a)	1228.22(a)(3)

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1228.42(b)	1228.22(a)(4)
1228.42(c)	1228.22(a)(5)
1228.44	1228.22(b)
1228.46	1228.22(c)
1228.50	1228.22(h) and 1228.66
1228.50(a)	
1228.50(a)(1)	
1228.50(a)(2)	
1228.50(a)(3)	
1228.50(a)(4)	1228.20(a), 1228.20(h), an 1228.66
1228.50(b)	
1228.50(c)	
1228.50(c)(1)	1228.20(g)(1)
1228.50(c)(2)	1228.20(g)(2)
1228.50(c)(3)	1228.20(g)(3)
1228.50(c)(4)	
1228.50(d)	1228.20(b)(6)
1228.52	1228.68
1228.54 (a) through (f)	1228.72
1228.54(g)	
1228.56	1228.34(e)
1228.58(a)	1228.74(a)
1228.58(b)	1228.74(b)
1228.58(c)	1228.74(d)
1228.60	1228.74(c)
1228.70	
1228.72	
1228.74	
1228.76	
1228.92(a)	1228.92(a)
1228.92(b)	1228.92(b)
1228.92(b)(1)	1228.92(b)(1)
1228.92(b)(2)	1228.92(b)(2)
1228.92(d)	1228.92(d)
1228.94	1228.94
1228.100	1228.100
1228.102	1228.102
1228.104 (a) through (a)(4)	1228.104
1228.104(a)(5)	
1228.124	1228.124
1228.136	1228.136
1228.152(a)(1)(i)	1228.152(a)(1)(i)

Regulations Formerly Appearing in 41 CFR parts 101-11 and 101-13, List of CFR Sections Affected

All changes in this volume of the Code of Federal Regulations which were made by documents published in the Federal Register prior to the transfer and redesignation of certain regulations in 41 CFR parts 101-11 and 101-13 (50 FR 15723, Apr. 19, 1985), are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to Federal Register pages. The user should consult the entries for chapters and parts as well as sections for revisions.

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(No regulations published)

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101-11.503-2 (a) revised..............14515
101-11.504-2 Revised....................14515
101-11.701-2 Revised....................3739
101-11.701-4 Revised....................3739
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101-11.701-10 Revised........3739, 14516
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101-11.701-4 Revised....................43461
101-11.701-5 Revised....................43461
101-11.701-6 Revised....................43461
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101-11.1304 Added....................33892

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101-11.412-1 Revised.....................34787
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Regulations Formerly Appearing in 41 CFR Chapter 105, List of CFR Sections Affected

All changes in this volume of the Code of Federal Regulations which were made by documents published in the FEDERAL REGISTER prior to the transfer and redesignation of certain regulations in 41 CFR chapter 105 (50 FR 15723, Apr. 19, 1985), are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to FEDERAL REGISTER pages. The user should consult the entries for chapters and parts as well as sections for revisions.

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105-61.304-1 Revised	11885
105-61.304-2 (a), (e), (f) and (i) revised	11885
105-61.306 Revised	11885
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